

ENDING MARITAL STATUS DISCRIMINATION

BY INSURANCE COMPANIES:

Report of the Insurance Commissioner's

Anti-Discrimination Task Force

SUPPLEMENT

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(continued on inside of back cover)

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INSURANCE—DISCRIMINATION—SEXUAL ORIENTATION, ETC.

CHAPTER 1402

A.B.No. 1721

AN ACT to add Section 1365.5 to the Health and Safety Code, and to amend Section 10140 of, and to add Section 11512.193 to, the Insurance Code, relating to health coverage.

[Approved by Governor September 27, 1990.]

[Filed with Secretary of State September 28, 1990.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1721, Friedman. Insurance discrimination: sexual orientation.

(1) Existing law prohibits health care service plans from canceling coverage except for specified reasons.

This bill would prohibit health care service plans from refusing to enter into, canceling, or declining to renew or reinstate a contract because of race, color, national origin, ancestry, religion, sex, marital status, sexual orientation, or age. It would also prohibit modification of the terms of the contract, including terms relating to price, for those reasons, except that premium, price, or charge differentials based on sex or age would be permitted if based upon specified data. However, the bill would provide that these provisions shall not be construed to permit a health care service plan to charge different premium rates to individual enrollees within the same group solely on the basis of the enrollee's sex.

(2) Existing law prohibits life and disability insurers from discriminating in eligibility or rates for insurance on the basis of race, color, religion, ancestry, or national origin.

This bill would prohibit life and disability insurers from discriminating, as to eligibility or rates, on the basis of sexual orientation. The bill would prohibit these insurers from considering sexual orientation in their underwriting criteria or utilizing marital status, living arrangements, occupation, gender, beneficiary designation, or zip codes or other territorial classifications to establish sexual orientation or to determine whether to

Additions or changes indicated by underline; deletions by asterisks * * *

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require a test for human immunodeficiency virus or antibodies thereto. However, the bill would not limit existing authority of insurers to require these tests or existing authority of the Insurance Commissioner to adopt and enforce antidiscrimination regulations. The bill would authorize civil penalties from \$1,000 to \$5,000 for each violation.

(3) This bill would also prohibit nonprofit hospital service plans from refusing to cover, or refusing to continue to cover, or limiting the amount, extent, or kind of coverage available to an individual, or charging a different rate for the same coverage because of race, color, religion, national origin, ancestry, or sexual orientation. The bill would prohibit these plans from considering sexual orientation in their underwriting criteria or utilizing marital status, living arrangements, occupation, gender, beneficiary designation, or zip codes or other territorial classifications to establish sexual orientation or to determine whether to require a test for human immunodeficiency virus or antibodies thereto. However, the bill would not limit the existing authority of the plans to require these tests or the existing authority of the Insurance Commissioner to adopt and enforce antidiscrimination regulations. The bill would authorize civil penalties from \$1,000 to \$5,000 for each violation.

The people of the State of California do enact as follows:

SECTION 1. Section 1365.5 is added to the Health and Safety Code, to read:

1365.5. (a) No health care service plan or specialized health care service plan shall refuse to enter into any contract or shall cancel or decline to renew or reinstate any contract because of the race, color, national origin, ancestry, religion, sex, marital status, sexual orientation, or age of any contracting party, prospective contracting party, or person reasonably expected to benefit from that contract as a subscriber, enrollee, member, or otherwise.

(b) The terms of any contract shall not be modified, and the benefits or coverage of any contract shall not be subject to any limitations, exceptions, exclusions, reductions, copayments, coinsurance, deductibles, reservations, or premium, price, or charge differentials, or other modifications because of the race, color, national origin, ancestry, religion, sex, marital status, sexual orientation, or age of any contracting party, potential contracting party, or person reasonably expected to benefit from that contract as a subscriber, enrollee, member, or otherwise; except that premium, price, or charge differentials because of the sex or age of any individual when based on objective, valid, and up-to-date statistical and actuarial data are not prohibited. Nothing in this section shall be construed to permit a health care service plan to charge different premium rates to individual enrollees within the same group solely on the basis of the enrollee's sex.

(c) It shall be deemed a violation of subdivision (a) for any health care service plan to utilize marital status, living arrangements, occupation, gender, beneficiary designation, zip codes or other territorial classification, or any combination thereof for the purpose of establishing sexual orientation. Nothing in this section shall be construed to alter in any manner the existing law prohibiting health care service plans from conducting tests for the presence of human immunodeficiency virus or evidence thereof.

(d) This section shall not be construed to limit the authority of the commissioner to adopt or enforce regulations prohibiting discrimination because of sex, marital status, or sexual orientation.

SEC. 2. Section 10140 of the Insurance Code is amended to read:

10140. (a) No admitted insurer, licensed to issue life or disability insurance, shall fail or refuse to accept an application for that insurance, to issue that insurance to an applicant therefor, or issue or cancel that insurance, under conditions less favorable to the insured than in other comparable cases, except for reasons applicable alike to persons of every race, color, religion, national origin, * * * ancestry * * * or sexual orientation. Race, color, religion, national origin, * * * ancestry, or sexual orientation shall not, of itself, constitute a condition or risk for which a higher rate, premium, or charge may be required of the insured for that insurance.

(b) It shall be deemed a violation of subdivision (a) for any insurer to consider sexual orientation in its underwriting criteria or to utilize marital status, living arrangements,

occupation, gender, beneficiary designation, zip codes or other territorial classification within this state, or any combination thereof for the purpose of establishing sexual orientation or determining whether to require a test for the presence of the human immunodeficiency virus or antibodies to that virus, where that testing is otherwise permitted by law. Nothing in this section shall be construed to alter, expand, or limit in any manner the existing law respecting the authority of insurers to conduct tests for the presence of human immunodeficiency virus or evidence thereof.

(c) Any insurer that knowingly violates this section shall for each violation be assessed a civil penalty in an amount not less than one thousand dollars (\$1,000) and not more than five thousand dollars (\$5,000) plus court costs, as determined by the court.

(d) This section shall not be construed to limit the authority of the commissioner to adopt regulations prohibiting discrimination because of sex, marital status, or sexual orientation or to enforce these regulations, whether adopted before or on or after January 1, 1991.

SEC. 3. Section 11512.193 is added to the Insurance Code, to read:

11512.193. (a) No nonprofit hospital service plan issuing, providing, or administering an individual or group nonprofit hospital service plan contract shall refuse to cover, or refuse to continue to cover, or limit the amount, extent, or kind of coverage available to an individual, or charge a different rate for the same coverage because of race, color, religion, national origin, ancestry, or sexual orientation.

(b) It shall be deemed a violation of subdivision (a) for any plan to consider sexual orientation in its underwriting criteria or to utilize marital status, living arrangements, occupation, gender, beneficiary designation, zip codes or other territorial classification within this state, or any combination thereof, for the purpose of establishing sexual orientation or determining whether or not to require a test for the presence of the human immunodeficiency virus or antibodies to that virus, where that testing is otherwise permitted by law. Nothing in this section shall be construed to alter, expand, or limit in any manner the existing law respecting the authority of insurers to conduct tests for the presence of human immunodeficiency virus or evidence thereof.

(c) Any plan that knowingly violates this section shall, for each violation, be assessed a civil penalty in an amount not less than one thousand dollars (\$1,000) and not more than five thousand dollars (\$5,000) plus court costs, as determined by the court.

(d) This section does not limit the authority of the commissioner to adopt regulations prohibiting discrimination because of sex, marital status, or sexual orientation, or to enforce those regulations, whether adopted before, on, or after January 1, 1991.

MOTOR VEHICLES—IGNITION INTERLOCK DEVICES—TRAFFIC OFFENDERS

CHAPTER 1403

A.B.No. 2040

AN ACT to add Section 9882.14 to the Business and Professions Code, to amend Section 11837.1 of the Health and Safety Code, to add Section 1203.1bb to the Penal Code, and to amend Section 13352 of, to add Sections 13202.7 and 40000.65 to, and to add Article 4 (commencing with Section 23235) to Chapter 12 of Division 11 of, the Vehicle Code, relating to driving offenses, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 1990.]

[Filed with Secretary of State September 28, 1990.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2040, Farr. Driving offenses: ignition interlock devices.

W

ASSEMBLY BILL

No. 1721

Introduced by Assembly Member Friedman

March 9, 1989

An act to amend Section 10140 of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 1721, as introduced, Friedman. Insurance discrimination: sexual orientation.

Existing law prohibits life and disability insurers from discriminating in eligibility or rates for insurance on the basis of race, color, religion, ancestry, or national origin.

This bill would add sexual orientation to these prohibited basis of discrimination. The bill would specify that it prohibits any insurer from considering sexual orientation in its underwriting criteria or utilizing marital status, living arrangements, occupation, gender, beneficiary designation, zip codes or other territorial classification, or any combination thereof for the purpose of establishing sexual orientation for any purpose related to its underwriting criteria, including its criteria for HIV testing.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 10140 of the Insurance Code is
- 2 amended to read:
- 3 10140. (a) No admitted insurer, licensed to issue life
- 4 or disability insurance, shall fail or refuse to accept an
- 5 application for ~~such~~ that insurance, to issue ~~such~~ that
- 6 insurance to an applicant therefor, or issue or cancel ~~such~~

1 *that insurance, under conditions less favorable to the*
2 *insured than in other comparable cases, except for*
3 *reasons applicable alike to persons of every race, color,*
4 *religion, national origin, or ancestry; ~~nor shall race, or~~*
5 *sexual orientation. Race, color, religion, national origin,*
6 *or ancestry, or sexual orientation shall not, of itself,*
7 *constitute a condition or risk for which a higher rate,*
8 *premium, or charge may be required of the insured for*
9 *such that insurance.*

10 *(b) It shall be deemed a violation of subdivision (a) for*
11 *any insurer to consider sexual orientation in its*
12 *underwriting criteria or to utilize marital status, living*
13 *arrangements, occupation, gender, beneficiary*
14 *designation, zip codes or other territorial classification, or*
15 *any combination thereof for the purpose establishing*
16 *sexual orientation for any purpose related to its*
17 *underwriting criteria, including any purpose prohibited*
18 *by Section 799.05.*

O

Date of Hearing: May 1, 1989

FINANCE AND INSURANCE SUBCOMMITTEE ON
HEALTH AND WORKERS' INSURANCE

Burt Margolin, Chair

AB 1721 (Friedman) - Introduced: March 9, 1989
As Proposed to be Amended

SUBJECT

Should health care service plans and life and disability insurers be prohibited from discriminating on the basis of sexual orientation?

DIGEST

Existing law prohibits life and disability insurers from discriminating in determining eligibility for or rates of insurance on the basis of race, color, religion, national origin or ancestry.

This bill would:

- 1) Add sexual orientation to the list of prohibited bases of discrimination.
- 2) Enact a parallel provision covering discrimination by health care service plans.
- 3) Prohibit use of sexual orientation in underwriting criteria.
- 4) Prohibit use of marital status, living arrangements, occupation, gender, beneficiary designation, zip code or other territorial classification to establish insurance or health care eligibility or to determine whether to require a test for the presence of human immunodeficiency virus or antibodies to it.
- 5) Authorize assessment of a civil penalty of \$1,000 to \$5,000 plus court costs for each violation, to be recovered by the aggrieved person.

FISCAL EFFECT

None

COMMENTS

- 1) NEED FOR THE BILL. According to the author, many insurers currently assume that single males have a higher risk of contracting AIDS if they reside in certain zip codes, work in certain occupations, maintain certain lifestyles or name male roommates as life insurance beneficiaries.

- continued -

Insurers reportedly target these individuals and deny coverage or charge exorbitant premiums. The author believes these discriminatory underwriting policies should be prohibited.

- 2) PENALTY PROVISION. As currently drafted, the bill would permit a person who is the victim of prohibited discrimination to go to court to seek a civil penalty of \$1,000 to \$5,000 plus court costs. While the author and the Department of Insurance prefer this private right of action as the remedy, some insurers have asked the author to consider instead an agency enforcement mechanism similar to the Unfair Practices Act. This point remains in discussion.
- 3) CURRENT REGULATION. The Department of Insurance has for about 10 years had a regulation prohibiting discrimination based on sex, marital status or sexual orientation. In response to department concerns that the existence of this bill might imply that the regulations are not authorized, the author has added language to clarify that this is not his intent.

The department and the author indicate that the existing remedy for violation of the regulation, which was promulgated pursuant to the unfair practices act, is prospective only. The department may seek a cease and desist order or an injunction, but no sanctions for past conduct are authorized. This bill would authorize imposition of such sanctions.

- 4) MARITAL STATUS DISCRIMINATION. Kaiser Foundation Health Plan has expressed concern about the provision prohibiting use of marital status in establishing eligibility. Would this provision require Kaiser to offer coverage to an adult companion or friend for each of its members?

SPONSOR: National Gay Rights Advocates

SUPPORT: Lobby for Individual Freedom and Equality (LIFE AIDS Lobby)

OPPOSITION: None Known.

AB 1721 (Friedman)
Amendments

STATEMENT

* These amendments simply conform discrimination provisions for nonprofit hospital service plans with similar provisions for life and disability insurers.

* The amendments make the penalty provisions and the definition of sexual orientation identical.

* The amendments also conform this bill to AB 2711 by Assemblywoman Moore by limiting the basis for premium, price or charge differentials to the sex or age of the individual. However, these amendments would specifically preclude charging different rates to enrollees in the same group based on the enrollee's sex.

W

AMENDED IN ASSEMBLY MAY 11, 1989

CALIFORNIA LEGISLATURE—1989-90 REGULAR SESSION

ASSEMBLY BILL

No. 1721

Introduced by Assembly Member ~~Friedman~~ Members
Friedman, Bates, Burton, Murray, Roos, Speier, Tucker,
and Vasconcellos
(Coauthors: Senators Marks and Rosenthal)

March 9, 1989

An act to add Section 1365.5 to the Health and Safety Code,
and to amend Section 10140 of the Insurance Code, relating
to insurance health coverage.

LEGISLATIVE COUNSEL'S DIGEST

AB 1721, as amended, Friedman. Insurance
discrimination: sexual orientation.

Existing law prohibits life and disability insurers from
discriminating in eligibility or rates for insurance on the basis
of race, color, religion, ancestry, or national origin. Existing
law prohibits health care service plans from canceling
coverage except for specified reasons.

This bill would add sexual orientation to these prohibited
basis of discrimination. The bill would specify that it prohibits
any insurer from considering sexual orientation in its
underwriting criteria or utilizing marital status, living
arrangements, occupation, gender, beneficiary designation,
zip codes or other territorial classification, or any combination
thereof for the purpose of establishing sexual orientation for
any purpose related to its underwriting criteria, including its
criteria for HIV testing.

This bill would prohibit life and disability insurers and
health care service plans from discriminating, as to eligibility
or rates, on the basis of sexual orientation. The bill would
prohibit these insurers and plans from considering sexual

orientation in their underwriting criteria or utilizing marital status, living arrangements, occupation, gender, beneficiary designation, or zip codes or other territorial classifications to establish sexual orientation or to determine whether to require a test for human immunodeficiency virus or antibodies thereto. The bill would authorize the Attorney General, district attorney, or city attorney, as specified, to recover civil penalties from \$1,000 to \$5,000 for each violation.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1365.5 is added to the Health and
2 Safety Code, to read:

3 1365.5. (a) No health care service plan shall fail or
4 refuse to accept an application for coverage or to provide
5 coverage to an applicant, or issue or cancel a subscription
6 or enrollment in the plan under conditions less favorable
7 to the subscriber or enrollee than in other comparable
8 cases, except for reasons applicable alike to persons of
9 every race, color, religion, national origin, ancestry, or
10 sexual orientation. Race, color, religion, national origin,
11 ancestry, or sexual orientation shall not, of itself,
12 constitute a condition or risk for which a higher rate,
13 premium, or charge may be required of the subscriber for
14 that coverage.

15 (b) It shall be deemed a violation of subdivision (a) for
16 any health care service plan to consider sexual
17 orientation in its underwriting criteria or to utilize
18 marital status, living arrangements, occupation, gender,
19 beneficiary designation, zip codes or other territorial
20 classification, or any combination thereof for the purpose
21 of establishing sexual orientation or determining whether
22 to require a test for the presence of the human
23 immunodeficiency virus or antibodies to that virus.

24 (c) Any health care service plan that knowingly
25 violates this section shall for each violation be assessed a
26 civil penalty in an amount not less than one thousand
27 dollars (\$1,000) and not more than five thousand dollars

1 (\$5,000) plus court costs, as determined by the court. The
2 penalty may be recovered by, and shall be paid to, the
3 Attorney General or the district attorney of any county,
4 or the city attorney of any city, in which a violation
5 occurs. The Attorney General, district attorney, and city
6 attorney shall have concurrent jurisdiction to enforce this
7 provision.

8 (d) This section shall not be construed to limit the
9 authority of the commissioner to adopt or enforce
10 regulations prohibiting discrimination because of sex,
11 marital status, or sexual orientation.

12 SEC. 2. Section 10140 of the Insurance Code is
13 amended to read:

14 10140. (a) No admitted insurer, licensed to issue life
15 or disability insurance, shall fail or refuse to accept an
16 application for that insurance, to issue that insurance to
17 an applicant therefor, or issue or cancel that insurance,
18 under conditions less favorable to the insured than in
19 other comparable cases, except for reasons applicable
20 alike to persons of every race, color, religion, national
21 origin, ancestry, or sexual orientation. Race, color,
22 religion, national origin, ancestry, or sexual orientation
23 shall not, of itself, constitute a condition or risk for which
24 a higher rate, premium, or charge may be required of the
25 insured for that insurance.

26 (b) It shall be deemed a violation of subdivision (a) for
27 any insurer to consider sexual orientation in its
28 underwriting criteria or to utilize marital status, living
29 arrangements, occupation, gender, beneficiary
30 designation, zip codes or other territorial classification, or
31 any combination thereof for the purpose of establishing
32 ~~sexual orientation for any purpose related to its~~
33 ~~underwriting criteria, including any purpose prohibited~~
34 ~~by Section 799.05. sexual orientation or determining~~
35 ~~whether to require a test for the presence of the human~~
36 ~~immunodeficiency virus or antibodies to that virus.~~

37 (c) Any insurer that knowingly violates this section
38 shall for each violation be assessed a civil penalty in an
39 amount not less than one thousand dollars (\$1,000) and
40 not more than five thousand dollars (\$5,000) plus court

1 *costs, as determined by the court. The penalty may be*
2 *recovered by, and shall be paid to, the Attorney General,*
3 *or the district attorney of any county, or the city attorney*
4 *of any city, in which a violation occurs. The Attorney*
5 *General, district attorney, and city attorney shall have*
6 *concurrent jurisdiction to enforce this provision.*

7 *(d) This section shall not be construed to limit the*
8 *authority of the commissioner to adopt or enforce*
9 *regulations prohibiting discrimination because of sex,*
10 *marital status, or sexual orientation.*

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Legislative Analyst
June 13, 1989

**ANALYSIS OF ASSEMBLY BILL NO. 1721 (Friedman)
As Amended in Assembly May 11, 1989
1989-90 Session**

Fiscal Effect:

Cost: None.

Revenue: None.

Analysis:

This bill prohibits life and disability insurers and health care service plans from discriminating on the basis of sexual orientation, regarding either eligibility or rates.

The bill prohibits these insurers and health care plans from considering sexual orientation in their underwriting criteria, or utilizing marital status, living arrangements, occupation, gender, beneficiary designation, or zip codes to establish sexual orientation. The bill also prohibits using the specified criteria in determining whether to require a test for the human immunodeficiency virus, or antibodies to it.

The bill further permits the Attorney General and local district attorneys to recover a civil penalty of \$1,000 to \$5,000 plus court costs for any violations against the bill's provisions.

Current law prohibits life and disability insurers from discriminating, in determining eligibility for or rates of insurance, on the basis of race, color, religion, national origin or ancestry. In addition,

current regulations issued by the Department of Insurance prohibit discriminating on the basis of sex, marital status, or sexual orientation.

Fiscal Effect

The Departments of Corporation and Insurance, and the Attorney General's Office, advise that this bill would result in no additional state costs.

84:85/s8

WAYS AND MEANS COMMITTEE ANALYSIS

Author: Friedman

Amended: 05/11/89

Bill No.: AB 1721

Policy Committee: Finance & Insurance

Vote: 11 - 5

Urgency: No

Hearing Date: 06/21/89

State Mandated Local Program: No

Staff Comments By:

Disclaimed:

Michael Reyna

Summary

This bill, among other things, prohibits life and disability insurers and health care service plans from discriminating, as to eligibility or rates, on the basis of sexual orientation.

Fiscal

No additional state cost.

Comments

Proposed author's amendments would add coauthors and delete reference to the Attorney General. These amendments would not alter the fiscal effect of the bill.

Legislative Analyst
June 13, 1989

ANALYSIS OF ASSEMBLY BILL NO. 1721 (Friedman)
As Amended in Assembly May 11, 1989
1989-90 Session

COPY

Fiscal Effect:

Cost: None.

Revenue: None.

Analysis:

This bill prohibits life and disability insurers and health care service plans from discriminating on the basis of sexual orientation, regarding either eligibility or rates.

The bill prohibits these insurers and health care plans from considering sexual orientation in their underwriting criteria, or utilizing marital status, living arrangements, occupation, gender, beneficiary designation, or zip codes to establish sexual orientation. The bill also prohibits using the specified criteria in determining whether to require a test for the human immunodeficiency virus, or antibodies to it.

The bill further permits the Attorney General and local district attorneys to recover a civil penalty of \$1,000 to \$5,000 plus court costs for any violations against the bill's provisions.

Current law prohibits life and disability insurers from discriminating, in determining eligibility for or rates of insurance, on the basis of race, color, religion, national origin or ancestry. In addition,

current regulations issued by the Department of Insurance prohibit discriminating on the basis of sex, marital status, or sexual orientation.

Fiscal Effect

The Departments of Corporation and Insurance, and the Attorney General's Office, advise that this bill would result in no additional state costs.

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AMENDED IN ASSEMBLY JUNE 26, 1989

AMENDED IN ASSEMBLY MAY 11, 1989

CALIFORNIA LEGISLATURE—1989-90 REGULAR SESSION

ASSEMBLY BILL

No. 1721

Introduced by Assembly Members Friedman, Bates,
Burton, Murray, Roos, Speier, Tucker, and Vasconcellos
(Coauthors: Senators Marks, *Roberti*, and Rosenthal)

March 9, 1989

An act to add Section 1365.5 to the Health and Safety Code, and to amend Section 10140 of the Insurance Code, relating to health coverage.

LEGISLATIVE COUNSEL'S DIGEST

AB 1721, as amended, Friedman. Insurance discrimination: sexual orientation.

Existing law prohibits life and disability insurers from discriminating in eligibility or rates for insurance on the basis of race, color, religion, ancestry, or national origin. Existing law prohibits health care service plans from canceling coverage except for specified reasons.

This bill would prohibit life and disability insurers and health care service plans from discriminating, as to eligibility or rates, on the basis of sexual orientation. The bill would prohibit these insurers and plans from considering sexual orientation in their underwriting criteria or utilizing marital status, living arrangements, occupation, gender, beneficiary designation, or zip codes or other territorial classifications to establish sexual orientation or to determine whether to require a test for human immunodeficiency virus or antibodies thereto. *However, the bill would not limit (1) existing authority of insurers to require these tests or (2) existing authority of the Insurance Commissioner to adopt*

specific antidiscrimination regulations and to enforce those regulations existing on December 31, 1989. The bill would authorize ~~the Attorney General, district attorney, attorneys~~ or city ~~attorney attorneys~~, as specified, to recover civil penalties from \$1,000 to \$5,000 for each violation.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1365.5 is added to the Health
2 and Safety Code, to read:

3 1365.5. (a) No health care service plan shall fail or
4 refuse to accept an application for coverage or to provide
5 coverage to an applicant, or issue or cancel a subscription
6 or enrollment in the plan under conditions less favorable
7 to the subscriber or enrollee than in other comparable
8 cases, except for reasons applicable alike to persons of
9 every race, color, religion, national origin, ancestry, or
10 sexual orientation. Race, color, religion, national origin,
11 ancestry, or sexual orientation shall not, of itself,
12 constitute a condition or risk for which a higher rate,
13 premium, or charge may be required of the subscriber for
14 that coverage.

15 (b) It shall be deemed a violation of subdivision (a) for
16 any health care service plan to consider sexual
17 orientation in its underwriting criteria or to utilize
18 marital status, living arrangements, occupation, gender,
19 beneficiary designation, zip codes or other territorial
20 classification, or any combination thereof for the purpose
21 of establishing sexual orientation or determining whether
22 to require a test for the presence of the human
23 immunodeficiency virus or antibodies to that virus.

24 (c) Any health care service plan that knowingly
25 violates this section shall for each violation be assessed a
26 civil penalty in an amount not less than one thousand
27 dollars (\$1,000) and not more than five thousand dollars
28 (\$5,000) plus court costs, as determined by the court. The
29 penalty may be recovered by, and shall be paid to, the
30 ~~Attorney General or the~~ district attorney of any county,

1 or the city attorney of any city, in which a violation
2 occurs. The ~~Attorney General, district attorney, district~~
3 ~~attorney~~ and city attorney shall have concurrent
4 jurisdiction to enforce this provision.

5 (d) This section shall not be construed to limit the
6 authority of the commissioner to adopt or enforce
7 regulations prohibiting discrimination because of sex,
8 marital status, or sexual orientation.

9 SEC. 2. Section 10140 of the Insurance Code is
10 amended to read:

11 10140. (a) No admitted insurer, licensed to issue life
12 or disability insurance, shall fail or refuse to accept an
13 application for that insurance, to issue that insurance to
14 an applicant therefor, or issue or cancel that insurance,
15 under conditions less favorable to the insured than in
16 other comparable cases, except for reasons applicable
17 alike to persons of every race, color, religion, national
18 origin, ancestry, or sexual orientation. Race, color,
19 religion, national origin, ancestry, or sexual orientation
20 shall not, of itself, constitute a condition or risk for which
21 a higher rate, premium, or charge may be required of the
22 insured for that insurance.

23 (b) It shall be deemed a violation of subdivision (a) for
24 any insurer to consider sexual orientation in its
25 underwriting criteria or to utilize marital status, living
26 arrangements, occupation, gender, beneficiary
27 designation, zip codes or other territorial classification, or
28 any combination thereof for the purpose of establishing
29 sexual orientation or determining whether to require a
30 test for the presence of the human immunodeficiency
31 virus or antibodies to that virus, *where that testing is*
32 *otherwise permitted by law. Nothing in this section shall*
33 *be construed to alter, expand, or limit in any manner the*
34 *existing law respecting authority of insurers to conduct*
35 *tests for the presence of human immunodeficiency virus*
36 *or evidence thereof.*

37 (c) Any insurer that knowingly violates this section
38 shall for each violation be assessed a civil penalty in an
39 amount not less than one thousand dollars (\$1,000) and
40 not more than five thousand dollars (\$5,000) plus court

1 costs, as determined by the court. The penalty may be
2 recovered by, and shall be paid to, ~~the Attorney General,~~
3 ~~or~~ the district attorney of any county, or the city attorney
4 of any city, in which a violation occurs. The ~~Attorney~~
5 ~~General, district attorney, district attorney~~ and city
6 attorney shall have concurrent jurisdiction to enforce this
7 provision *with respect to violations occurring within a*
8 *city.*

9 (d) This section shall not be construed to limit the
10 authority of the commissioner to adopt ~~or enforce~~
11 regulations prohibiting discrimination because of sex,
12 marital status, or sexual orientation *or to enforce these*
13 *regulations existing on December 31, 1989.*

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ASSEMBLY THIRD READING

AB 1721 (Friedman) - As Amended: June 27, 1989

ASSEMBLY ACTIONS:

COMMITTEE FINS. & INS. VOTE 11-5 COMMITTEE W. & M. VOTE 14-9

Ayes: Johnston, Bronzan, Chacon,
Epple, Farr, Floyd, Katz,
Margolin, Moore, O'Connell,
Sher

Ayes: Vasconcellos, Burton,
Campbell, Clute, Friedman,
Hannigan, Harris, Killea,
O'Connell, Polanco, Roos,
Roybal-Allard, Speier,
M. Waters

Nays: Bader, D. Brown, Lancaster,
Lewis, Wright

Nays: Baker, D. Brown, Felando, Hill,
Jones, Mojonnier, Nolan,
Seastrand, Wright

DIGEST

Existing law prohibits life and disability insurers from discriminating in determining eligibility for, or rates of, insurance on the basis of race, color, religion, national origin or ancestry.

is bill:

- 1) Adds sexual orientation to the list of prohibited bases of discrimination.
- 2) Enacts a parallel provision covering discrimination by health care service plans.
- 3) Prohibits use of sexual orientation in underwriting criteria.
- 4) Prohibits use of marital status, living arrangements, occupation, gender, beneficiary designation, zip code or other territorial classification to establish sexual orientation or to determine whether to require a test for the presence of human immunodeficiency virus or antibodies to it.
- 5) Authorizes assessment of a civil penalty of \$1,000 to \$5,000 plus court costs for each knowing violation, to be recovered by the district attorney or the city attorney.

FISCAL EFFECT

None

- continued -

COMMENTS

- 1) According to the author, many insurers currently assume that single males have a higher risk of contracting AIDS if they reside in certain zip codes, work in certain occupations, maintain certain lifestyles or name male roommates as life insurance beneficiaries. Insurers reportedly target these individuals and deny coverage or charge exorbitant premiums. The author believes these discriminatory underwriting policies should be prohibited.
- 2) As currently drafted, the bill would permit the district attorney or city attorney to go to court to seek a civil penalty of \$1,000 to \$5,000 for each knowing violation, plus court costs. These prosecutors would have concurrent jurisdiction to enforce the bill's provisions.
- 3) The Department of Insurance has, for about 10 years, had a regulation prohibiting discrimination based on sex, marital status or sexual orientation. The department and the author indicate that the existing remedy for violation of the regulation, which was promulgated pursuant to the Unfair Practices Act, is prospective only. The department may seek a cease and desist order or an injunction, but no sanctions for past conduct are authorized. This bill would authorize imposition of such sanctions.

which are enumerated in the bill. This is a reasonable way to allow hospitals to use some of their other buildings for overflow without jeopardizing patient safety.

Assembly Republican Committee Vote

Health -- 5/9/89

(11-3) Ayes: All Republicans except
Abs.: Felando, Hill, Statham

Ways & Means -- 6/20/89

(13-6) Ayes: Baker, D. Brown, Hill, Jones, Mojonnier,
Wright

Noes: Felando

Abs.: Nolan, Seastrand

Consultant: Jan Dell

FILE NUMBER 111

FILE NUMBER 111

AB 1721 (Friedman) -- INSURANCE DISCRIMINATION

Version: Original

Lead: Pat Nolan

Recommendation: Oppose

Vote: Majority

Summary: Prohibits life or disability underwriters from discriminating against applicants, as to eligibility or rates, based on sexual orientation. Fiscal effect: No appropriation

Supported by: LIFE AIDS Lobby; National Gay Rights Advocates; California Medical Association. Opposed by: Committee on Moral Concerns. Governor's position: Not known

Comments: Redefining by statute degrees of risk undermines the basic function of insurance. No category of personal behavior which influences life expectancy or health should be precluded from an insurer's actuarial calculations.

Assembly Republican Committee vote

F&I -- 5/9/89

(11-5) Noes: Bader, Brown, Lancaster, Lewis, Wright
Abs.: Nolan, Seastrand, Statham

Ways & Means -- 6/20/89

(14-9) Noes: All Republicans

Consultant: Peter Conlin

FILE NUMBER 112

FILE NUMBER 112

ASSEMBLY FLOOR VOTE:

ASSEMBLY BILL NO. 1721 (Friedman)—An act to add Section 1365.5 to the Health and Safety Code, and to amend Section 10140 of the Insurance Code, relating to health coverage.

Bill read third time, and passed by the following vote:

AYES—43

Arcias	Cortese	Hayden	O'Connell
Bane	Costa	Hughes	Polanco
Bates	Eastin	Izenberg	Ross
Bronzan	Elder	Johnston	Roybal-Allard
Burton	Epple	Katz	Sher
Calderon	Farr	Killea	Speier
Campbell	Filante	Kiehs	Tanner
Chacon	Friedman	Lempert	Vasconcellos
Clute	Hannigan	Margolin	Waters, Maxine
Condit	Harris	Moore	Mr. Speaker
Connelly	Hauser	Murray	

NOES—32

Allen	Floyd	Kelley	Nolan
Sader	Frazee	La Follette	Pringle
Saker	Frizzelle	Lancaster	Quackenbush
Sentley	Friksen	Leslie	Seastrand
Trown, Dennis	Harvey	Lewis	Statham
Wardner	Hill	McClintock	Woodruff
Wando	Johanson	Mojonnier	Wright
Werguson	Jones	Mountjoy	Wyman

Bill ordered transmitted to the Senate.

DLW:nf 8/30/90 Senate Floor Analyses

AMENDED IN SENATE JULY 20, 1989
AMENDED IN ASSEMBLY JUNE 26, 1989
AMENDED IN ASSEMBLY MAY 11, 1989

CALIFORNIA LEGISLATURE—1989-90 REGULAR SESSION

ASSEMBLY BILL

No. 1721

Introduced by Assembly Members Friedman, Bates,
Burton, Murray, Roos, Speier, Tucker, and Vasconcellos
(Coauthors: Senators Marks, Roberti, and Rosenthal)

March 9, 1989

An act to add Section 1365.5 to the Health and Safety Code, and to amend Section 10140 of the Insurance Code, relating to health coverage.

LEGISLATIVE COUNSEL'S DIGEST

AB 1721, as amended, Friedman. Insurance discrimination: sexual orientation.

Existing law prohibits life and disability insurers from discriminating in eligibility or rates for insurance on the basis of race, color, religion, ancestry, or national origin. Existing law prohibits health care service plans from canceling coverage except for specified reasons.

This bill would prohibit life and disability insurers and health care service plans from discriminating, as to eligibility or rates, on the basis of sexual orientation. The bill would prohibit these insurers and plans from considering sexual orientation in their underwriting criteria or utilizing marital status, living arrangements, occupation, gender, beneficiary designation, or zip codes or other territorial classifications to establish sexual orientation or to determine whether to require a test for human immunodeficiency virus or antibodies thereto. However, the bill would not limit (1)

existing authority of insurers *and health care service plans* to require these tests or (2) existing authority of the Insurance Commissioner to adopt *specific and enforce* antidiscrimination regulations *and to enforce these regulations existing on December 31, 1989*. The bill would authorize district attorneys or city attorneys, as specified, to recover civil penalties from \$1,000 to \$5,000 for each violation.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1365.5 is added to the Health
2 and Safety Code, to read:

3 1365.5. (a) No health care service plan shall fail or
4 refuse to accept an application for coverage or to provide
5 coverage to an applicant, or issue or cancel a subscription
6 or enrollment in the plan under conditions less favorable
7 to the subscriber or enrollee than in other comparable
8 cases, except for reasons applicable alike to persons of
9 every race, color, religion, national origin, ancestry, or
10 sexual orientation. Race, color, religion, national origin,
11 ancestry, or sexual orientation shall not, of itself,
12 constitute a condition or risk for which a higher rate,
13 premium, or charge may be required of the subscriber for
14 that coverage.

15 (b) It shall be deemed a violation of subdivision (a) for
16 any health care service plan to consider sexual
17 orientation in its underwriting criteria or to utilize
18 marital status, living arrangements, occupation, gender,
19 beneficiary designation, zip codes or other territorial
20 classification, or any combination thereof for the purpose
21 of establishing sexual orientation or determining whether
22 to require a test for the presence of the human
23 immunodeficiency virus or antibodies to that virus
24 *where that testing is otherwise permitted by law.*
25 *Nothing in this section shall be construed to alter, expand,*
26 *or limit in any manner the existing law respecting*
27 *authority of health care service plans to conduct tests for*
28 *the presence of human immunodeficiency virus or*

1 *evidence thereof.*

2 (c) Any health care service plan that knowingly
3 violates this section shall for each violation be assessed a
4 civil penalty in an amount not less than one thousand
5 dollars (\$1,000) and not more than five thousand dollars
6 (\$5,000) plus court costs, as determined by the court. The
7 penalty may be recovered by, and shall be paid to, the
8 district attorney of any county, or the city attorney of any
9 city, in which a violation occurs. The district attorney and
10 city attorney shall have concurrent jurisdiction to enforce
11 this provision *with respect to violations occurring within*
12 *a city.*

13 (d) This section shall not be construed to limit the
14 authority of the commissioner to adopt or enforce
15 regulations prohibiting discrimination because of sex,
16 marital status, or sexual orientation.

17 SEC. 2. Section 10140 of the Insurance Code is
18 amended to read:

19 10140. (a) No admitted insurer, licensed to issue life
20 or disability insurance, shall fail or refuse to accept an
21 application for that insurance, to issue that insurance to
22 an applicant therefor, or issue or cancel that insurance,
23 under conditions less favorable to the insured than in
24 other comparable cases, except for reasons applicable
25 alike to persons of every race, color, religion, national
26 origin, ancestry, or sexual orientation. Race, color,
27 religion, national origin, ancestry, or sexual orientation
28 shall not, of itself, constitute a condition or risk for which
29 a higher rate, premium, or charge may be required of the
30 insured for that insurance.

31 (b) It shall be deemed a violation of subdivision (a) for
32 any insurer to consider sexual orientation in its
33 underwriting criteria or to utilize marital status, living
34 arrangements, occupation, gender, beneficiary
35 designation, zip codes or other territorial classification, or
36 any combination thereof for the purpose of establishing
37 sexual orientation or determining whether to require a
38 test for the presence of the human immunodeficiency
39 virus or antibodies to that virus, where that testing is
40 otherwise permitted by law. Nothing in this section shall

1 be construed to alter, expand, or limit in any manner the
2 existing law respecting *the* authority of insurers to
3 conduct tests for the presence of human
4 immunodeficiency virus or evidence thereof.

5 (c) Any insurer that knowingly violates this section
6 shall for each violation be assessed a civil penalty in an
7 amount not less than one thousand dollars (\$1,000) and
8 not more than five thousand dollars (\$5,000) plus court
9 costs, as determined by the court. The penalty may be
10 recovered by, and shall be paid to, the district attorney of
11 any county, or the city attorney of any city, in which a
12 violation occurs. The district attorney and city attorney
13 shall have concurrent jurisdiction to enforce this
14 provision with respect to violations occurring within a
15 city.

16 (d) This section shall not be construed to limit the
17 authority of the commissioner to adopt regulations
18 prohibiting discrimination because of sex, marital status,
19 or sexual orientation or to enforce these ~~regulations~~
20 ~~existing on December 31, 1989.~~ *regulations, whether*
21 *adopted before or on or after January 1, 1990.*

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SENATOR ALAN ROBBINS, CHAIRMAN

ASSEMBLY BILL NO. 1721 (Friedman, et. al.) As Amended July 20, 1988
Health & Safety Code
Insurance Code

Source: National Gay Rights Advocates
Prior Legislation: None Known
Support: LIFE AIDS Lobby
AIDS Project Los Angeles
California Medical Association
National Association of Social Workers
California Nurses Association
American Civil Liberties Union
California National Organization for Women
Opposition: Committee on Moral Concerns
Interest: Department of Insurance
Association of California Life Insurance Companies

SUBJECT

Prohibition of life and disability insurers and health care service plans from discriminating in eligibility, rates, underwriting, or use of specific factors on the basis of sexual orientation.

DIGEST

1] Description: This bill prohibits every life and disability insurer and health care service plan when considering an applicant for coverage, or issuing, or canceling coverage from engaging in the use of sexual orientation on a discriminatory basis by applying standards of eligibility, rates, underwriting criteria, or utilizing the following factors.

The factors of marital status, living arrangements, occupation, gender, designation of the beneficiary, or zip code or other territorial classifications cannot be used to establish sexual orientation or to determine whether an HIV or antibodies test can be required. However, existing statutory authority for insurers to conduct specific HIV tests for life insurance applicants and for health care service plans to conduct tests for the presence or evidence of HIV or for the Insurance Commissioner to adopt and enforce new or existing antidiscrimination regulations remain unimpaired.

No health care service plan shall use race, color, religion, national origin, ancestry, or sexual orientation as a separate condition of risk for the purposes of establishing rates, just as life and disability insurers are currently prohibited from such actions.

Any life or disability insurer or health care service plan which knowingly violates this prohibition is subject to a civil penalty for each violation

of not less than \$1000 or more than \$5000, plus court determined costs. Jurisdiction to enforce the prohibition is concurrent with local district and city attorneys for violations occurring within a city with the penalties paid to the local jurisdiction.

2] Background: Current law prohibits a life or disability insurer from discriminating in eligibility or rates on the basis of race, color, religion, ancestry, or national origin.

There is no existing law which prohibits a life or disability insurer from discriminating on the basis of sexual orientation, although the Department of Insurance has adopted regulations which subject insurers to prospective cease and desist orders or injunction for violation of the Unfair Claims Practices Act based upon numerous grounds, including sex, marital status, or sexual orientation.

There is no existing law in the Knox-Keene Health Care Service Plan Act of 1975 which establishes any prohibitions for health care service plans to discriminate.

FISCAL EFFECT Fiscal Committee: Yes

STAFF COMMENTS

The author, sponsor, and proponents contend that sexual orientation has no basis as a discriminating factor in the issuance of disability coverage. Further, the AIDS epidemic has seen a proliferation of applicant denial for life and disability coverage and cancellation of that coverage by insurers and health plans without valid reasons. This bill is intended to enhance consumer protections and to permit the regulator and law enforcement to act with sufficient statutory authority.

The opponent states: 1) "Private sex acts should not translate into favorable public policy."; 2) "... 'sexual orientation' equal high risk ... as long as insurance companies are allowed to assess risk in any form, they must be permitted to consider sexual orientation."

SAL BIANCO
Consultant

ASSEMBLY BILL NO. 1721

8/23/89

SENATOR ALAN ROBBINS, CHAIRMAN

ASSEMBLY BILL NO. 1721 (Friedman, et. al.) As Amended June 26, 1989

Health & Safety Code

Insurance Code

Source: National Gay Rights Advocates

Prior Legislation: None Known

Support: LIFE AIDS Lobby

AIDS Project Los Angeles

California Medical Association

National Association of Social Workers

California Nurses Association

American Civil Liberties Union

Opposition: None Known

Interest: Department of Insurance

Association of California Life Insurance Companies

SUBJECT

Prohibition of life and disability insurers and health care service plans from discriminating in eligibility, rates, underwriting, or use of specific factors on the basis of sexual orientation.

DIGEST

1] Description: This bill prohibits every life and disability insurer and health care service plan when considering an applicant for coverage, or issuing, or canceling coverage from engaging in the use of sexual orientation on a discriminatory basis by applying standards of eligibility, rates, underwriting criteria, or utilizing the following factors.

The factors of marital status, living arrangements, occupation, gender, designation of the beneficiary, or zip code or other territorial classifications cannot be used to establish sexual orientation or to determine whether an HIV or antibodies test can be required. However, existing statutory authority for insurers to conduct specific HIV tests for life insurance applicants and for the Insurance Commissioner to adopt and enforce antidiscrimination regulations remain unimpaired.

No health care service plan shall use race, color, religion, national origin, ancestry, or sexual orientation as a separate condition of risk for the purposes of establishing rates, just as life and disability insurers are currently prohibited from such actions.

Any life or disability insurer or health care service plan which knowingly violates this prohibition is subject to a civil penalty for each violation of not less than \$1000 or more than \$5000, plus court determined costs. Jurisdiction to enforce the prohibition is concurrent with local district and city attorneys with the penalties paid to the local jurisdiction.

2] Background: Current law prohibits a life or disability insurer from discriminating in eligibility or rates on the basis of race, color, religion, ancestry, or national origin.

There is no existing law which prohibits a life or disability insurer from discriminating on the basis of sexual orientation, although the Department of Insurance has adopted regulations which subject insurers to prospective cease and desist orders or injunction for violation of the Unfair Claims Practices Act based upon numerous grounds, including sex, martial status, or sexual orientation.

There is no existing law in the Knox-Keene Health Care Service Plan Act of 1975 which establishes any prohibitions for health care service plans to discriminate.

FISCAL EFFECT Fiscal Committee: Yes

STAFF COMMENTS

The author, sponsor, and proponents contend that sexual orientation has no basis as a discriminating factor in the issuance of disability coverage. Further, the AIDS epidemic has seen a proliferation of applicant denial for life and disability coverage and cancellation of that coverage by insurers and health plans without valid reasons. This bill is intended to enhance consumer protections and to permit the regulator and law enforcement to act with sufficient statutory authority.

SAL BIANCO
Consultant

ASSEMBLY BILL NO. 1721

07/19/89

COMMENTS

- 1) According to the author, many insurers currently assume that single males have a higher risk of contracting AIDS if they reside in certain zip codes, work in certain occupations, maintain certain lifestyles or name male roommates as life insurance beneficiaries. Insurers reportedly target these individuals and deny coverage or charge exorbitant premiums. The author believes these discriminatory underwriting policies should be prohibited.
- 2) As currently drafted, the bill would permit the district attorney or city attorney to go to court to seek a civil penalty of \$1,000 to \$5,000 for each knowing violation, plus court costs. These prosecutors would have concurrent jurisdiction to enforce the bill's provisions.
- 3) The Department of Insurance has, for about 10 years, had a regulation prohibiting discrimination based on sex, marital status or sexual orientation. The department and the author indicate that the existing remedy for violation of the regulation, which was promulgated pursuant to the Unfair Practices Act, is prospective only. The department may seek a cease and desist order or an injunction, but no sanctions for past conduct are authorized. This bill would authorize imposition of such sanctions.

W

AMENDED IN SENATE JUNE 25, 1990
AMENDED IN SENATE JULY 20, 1989
AMENDED IN ASSEMBLY JUNE 26, 1989
AMENDED IN ASSEMBLY MAY 11, 1989

CALIFORNIA LEGISLATURE—1989-90 REGULAR SESSION

ASSEMBLY BILL

No. 1721

Introduced by Assembly Members Friedman, Bates,
Burton, Murray, Roos, Speier, Tucker, and Vasconcellos
(Coauthors: Senators Marks, Roberti, and Rosenthal)

March 9, 1989

An act to add Section 1365.5 to the Health and Safety Code, and to amend Section 10140 of, *and to add Section 11512.193 to*, the Insurance Code, relating to health coverage.

LEGISLATIVE COUNSEL'S DIGEST

AB 1721, as amended, Friedman. Insurance discrimination: sexual orientation.

(1) Existing law prohibits life and disability insurers from discriminating in eligibility or rates for insurance on the basis of race, color, religion, ancestry, or national origin. Existing law prohibits health care service plans from canceling coverage except for specified reasons.

This bill would prohibit health care service plans from refusing to enter into, canceling, or declining to renew or reinstate a contract because of race, color, national origin, ancestry, religion, sex, marital status, sexual orientation, or age. It would also prohibit modification of the terms of the contract, including terms relating to price, for those reasons, except that premium, price, or charge differentials based on sex or age would be permitted if based upon specified data.

(2) Existing law prohibits life and disability insurers from discriminating in eligibility or rates for insurance on the basis of race, color, religion, ancestry, or national origin.

This bill would prohibit life and disability insurers ~~and health care service plans~~ from discriminating, as to eligibility or rates, on the basis of sexual orientation. The bill would prohibit these insurers ~~and plans~~ from considering sexual orientation in their underwriting criteria or utilizing marital status, living arrangements, occupation, gender, beneficiary designation, or zip codes or other territorial classifications to establish sexual orientation or to determine whether to require a test for human immunodeficiency virus or antibodies thereto. However, the bill would not limit ~~(1)~~ existing authority of insurers ~~and health care service plans~~ to require these tests or ~~(2)~~ existing authority of the Insurance Commissioner to adopt and enforce antidiscrimination regulations. The bill would authorize district attorneys or city attorneys, as specified, to recover civil penalties from \$1,000 to \$5,000 for each violation.

(3) This bill would also prohibit nonprofit hospital services plans from refusing to cover, or refusing to continue to cover, or limiting the amount, extent, or kind of coverage available to an individual, or charging a different rate for the same coverage because of race, color, religion, national origin, ancestry, or sexual orientation.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1365.5 is added to the Health
2 and Safety Code, to read:
3 1365.5. ~~(a) No health care service plan shall fail or~~
4 ~~refuse to accept an application for coverage or to provide~~
5 ~~coverage to an applicant, or issue or cancel a subscription~~
6 ~~or enrollment in the plan under conditions less favorable~~
7 ~~to the subscriber or enrollee than in other comparable~~
8 ~~cases; except for reasons applicable alike to persons of~~
9 ~~every race, color, religion, national origin, ancestry, or~~
10 ~~sexual orientation. Race, color, religion, national origin,~~

1 ancestry, or sexual orientation shall not, of itself,
2 constitute a condition or risk for which a higher rate,
3 premium, or charge may be required of the subscriber for
4 that coverage.

5 ~~(b)~~

6 1365.5. (a) No health care service plan or specialized
7 health care service plan shall refuse to enter into any
8 contract or shall cancel or decline to renew or reinstate
9 any contract because of the race, color, national origin,
10 ancestry, religion, sex, marital status, sexual orientation,
11 or age of any contracting party, prospective contracting
12 party, or person reasonably expected to benefit from that
13 contract as a subscriber, enrollee, member, or otherwise.

14 (b) The terms of any contract shall not be modified,
15 and the benefits or coverage of any contract shall not be
16 subject to any limitations, exceptions, exclusions,
17 reductions, copayments, coinsurance, deductibles,
18 reservations, or premium, price, or charge differentials,
19 or other modifications because of the race, color, national
20 origin, ancestry, religion, sex, marital status, sexual
21 orientation, or age of any contracting party, potential
22 contracting party, or person reasonably expected to
23 benefit from that contract as a subscriber, enrollee,
24 member, or otherwise; except that premium, price, or
25 charge differentials because of the sex or age of any
26 individual when based on objective, valid, and up-to-date
27 statistical and actuarial data are not prohibited.

28 (c) It shall be deemed a violation of subdivision (a) for
29 any health care service plan to consider sexual
30 orientation in its underwriting criteria or to utilize
31 marital status, living arrangements, occupation, gender,
32 beneficiary designation, zip codes or other territorial
33 classification, or any combination thereof for the purpose
34 of establishing sexual orientation or determining whether
35 to require a test for the presence of the human
36 immunodeficiency virus or antibodies to that virus where
37 that testing is otherwise permitted by law. Nothing in
38 this section shall be construed to alter, expand, or limit
39 in any manner the existing law respecting authority of
40 health care service plans to conduct tests for prohibiting

1 *health care service plans from conducting tests for the*
2 *presence of human immunodeficiency virus or evidence*
3 *thereof.*

4 ~~(c) Any health care service plan that knowingly~~
5 ~~violates this section shall for each violation be assessed a~~
6 ~~civil penalty in an amount not less than one thousand~~
7 ~~dollars (\$1,000) and not more than five thousand dollars~~
8 ~~(\$5,000) plus court costs, as determined by the court. The~~
9 ~~penalty may be recovered by, and shall be paid to, the~~
10 ~~district attorney of any county, or the city attorney of any~~
11 ~~city, in which a violation occurs. The district attorney and~~
12 ~~city attorney shall have concurrent jurisdiction to enforce~~
13 ~~this provision with respect to violations occurring within~~
14 ~~a city.~~

15 (d) This section shall not be construed to limit the
16 authority of the commissioner to adopt or enforce
17 regulations prohibiting discrimination because of sex,
18 marital status, or sexual orientation.

19 SEC. 2. Section 10140 of the Insurance Code is
20 amended to read:

21 10140. (a) No admitted insurer, licensed to issue life
22 or disability insurance, shall fail or refuse to accept an
23 application for that insurance, to issue that insurance to
24 an applicant therefor, or issue or cancel that insurance,
25 under conditions less favorable to the insured than in
26 other comparable cases, except for reasons applicable
27 alike to persons of every race, color, religion, national
28 origin, ancestry, or sexual orientation. Race, color,
29 religion, national origin, ancestry, or sexual orientation
30 shall not, of itself, constitute a condition or risk for which
31 a higher rate, premium, or charge may be required of the
32 insured for that insurance.

33 (b) It shall be deemed a violation of subdivision (a) for
34 any insurer to consider sexual orientation in its
35 underwriting criteria or to utilize marital status, living
36 arrangements, occupation, gender, beneficiary
37 designation, zip codes or other territorial classification
38 *within this state*, or any combination thereof for the
39 purpose of establishing sexual orientation or determining
40 whether to require a test for the presence of the human

1 immunodeficiency virus or antibodies to that virus,
2 where that testing is otherwise permitted by law.
3 Nothing in this section shall be construed to alter, expand,
4 or limit in any manner the existing law respecting the
5 authority of insurers to conduct tests for the presence of
6 human immunodeficiency virus or evidence thereof.

7 (c) Any insurer that knowingly violates this section
8 shall for each violation be assessed a civil penalty in an
9 amount not less than one thousand dollars (\$1,000) and
10 not more than five thousand dollars (\$5,000) plus court
11 costs, as determined by the court. The penalty may be
12 recovered by, and shall be paid to, the district attorney of
13 any county, or the city attorney of any city, in which a
14 violation occurs. The district attorney and city attorney
15 shall have concurrent jurisdiction to enforce this
16 provision with respect to violations occurring within a
17 city.

18 (d) This section shall not be construed to limit the
19 authority of the commissioner to adopt regulations
20 prohibiting discrimination because of sex, marital status,
21 or sexual orientation or to enforce these regulations,
22 whether adopted before or on or after January 1, 1990
23 1991.

24 *SEC. 3. Section 11512.193 is added to the Insurance*
25 *Code, to read:*

26 *11512.193. (a) No nonprofit hospital service plan*
27 *issuing, providing, or administering an individual or*
28 *group nonprofit hospital service plan contract entered*
29 *into, issued, or amended on or after January 1, 1991, shall*
30 *refuse to cover, or refuse to continue to cover, or limit the*
31 *amount, extent, or kind of coverage available to an*
32 *individual, or charge a different rate for the same*
33 *coverage because of race, color, religion, national origin,*
34 *ancestry, or sexual orientation.*

35 *(b) This section does not limit the authority of the*
36 *commissioner to adopt regulations prohibiting*
37 *discrimination because of sex, marital status, or sexual*
38 *orientation, or to enforce those regulations, whether*
39 *adopted before, on, or after January 1, 1991.*

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AB 1721 - Insurance Discrimination
Senate Insurance
8/8/90

STATEMENT

* Because gay men have been the hardest hit by the AIDS epidemic, some health insurers have endeavored to cut their losses by categorically denying health coverage on the basis of sexual orientation. *SAVE COST OF UNINSURED + MEDICAL*

* One example was a company that refused to write health policies for single men residing in San Francisco.

* Another longstanding case was the recently settled case against Great Republic Insurance Co. Great Republic required its agents to submit a supplemental questionnaire to single men with no dependents working in jobs that require little physical exertion, such as floral design or interior decorating.

* The settlement in Great Republic, which only applies to Great Republic, prohibits discriminating on the basis of sexual orientation and further precludes the use of factors such as living arrangements, beneficiary and ZIP code to establish sexual orientation.

* The settlement is consistent with the provisions of AB 1721. My bill prohibits discrimination on the basis of sexual orientation in the provision of health coverage by health care service plans, life and disability insurers and non-profit hospital service plans.

* The latest amendments removed the concerns of the Department of Corporations, essentially by codifying the department's regulations relative to discrimination and removing duplicative penalty language.

* The bill is supported by California Medical Assn., California Nurses Assn., LIFE AIDS Lobby, California Teachers Assn., and California NOW.

TERRY: Moore's AB 2711, which is also up Wednesday, is being amended to conform her Knox-Keene provisions to yours. Health Insurance Assn. of America asked ICC if we would be willing to remove penalty section for life and disability section; they did not talk to anyone in our office. I told ICC to tell HIAA that we would not be interested in such an amendment; there is no blanket penalty section like Knox-Keene, and having penalties specific to discrimination is appropriate in Insurance Code because there are other specific penalty sections (i.e. code re insurance supplements to Medicare).

Statement AB 1721

3 Since the rise of the AIDS, there has been a number of cases in which insurance companies have denied coverage because of the applicant's sexual orientation. The assumption of course, is that because an applicant is gay, he must have AIDS. Although the Department of Insurance has a regulation that prohibits such discrimination, a statutory prohibition is needed to enhance protection and penalties for such unethical discrimination.

Any health care service plan that violates this section shall be assessed a civil penalty in an amount not less than \$1,000 and not more than \$5,000.

1 AB 1721 prohibits health insurance discrimination on the grounds of sexual orientation. This bill prohibits any health care service plan from refusing to provide coverage to an applicant, issue, or cancel a subscription on the grounds of sexual orientation. Race, color, religion, national origin, ancestry or sexual orientation should not constitute a condition or risk for which a higher premium is required.

2 One health insurance company distributed an "AIDS" profile which required its agents to segregate applications from those "single males without dependents that are engaged in occupations that don't require physical exertion." Another company urged agents to scrutinize applicants who are unmarried, who show evidence of a sexually promiscuous lifestyle and who live in identifiable gay zip codes.

These blatant discriminatory underwriting policies must be prohibited. Insurance is a necessity, and in light of the AIDS epidemic, individuals more than ever need to be guaranteed access to health insurance in an environment free of discrimination. I ask for your aye vote.

4 AXA
CNA
LIFE

which are enumerated in the bill. This is a reasonable way to allow hospitals to use some of their other buildings for overflow without jeopardizing patient safety.

Assembly Republican Committee Vote

Health -- 5/9/89

(11-3) Ayes: All Republicans except
Abs.: Felando, Hill, Statham

Ways & Means -- 6/20/89

(13-6) Ayes: Baker, D. Brown, Hill, Jones, Mojonnier,
Wright

Noes: Felando

Abs.: Nolan, Seastrand

Consultant: Jan Dell

FILE NUMBER 111

FILE NUMBER 111

AB 1721 (Friedman) -- INSURANCE DISCRIMINATION

Version: Original

Lead: Pat Nolan

Recommendation: Oppose

Vote: Majority

Summary: Prohibits life or disability underwriters from discriminating against applicants, as to eligibility or rates, based on sexual orientation. Fiscal effect: No appropriation

Supported by: LIFE AIDS Lobby; National Gay Rights Advocates; California Medical Association. Opposed by: Committee on Moral Concerns. Governor's position: Not known

Comments: Redefining by statute degrees of risk undermines the basic function of insurance. No category of personal behavior which influences life expectancy or health should be precluded from an insurer's actuarial calculations.

Assembly Republican Committee vote

F&I -- 5/9/89

(11-5) Noes: Bader, Brown, Lancaster, Lewis, Wright
Abs.: Nolan, Seastrand, Statham

Ways & Means -- 6/20/89

(14-9) Noes: All Republicans

Consultant: Peter Conlin

FILE NUMBER 112

FILE NUMBER 112

Support AB 1721

American Civil Liberties Union
AIDS Project Los Angeles
California Nurses Association
California Teachers Association
California Medical Association
Lobby For Individual Freedom and Equality
National Association of Social Workers

OPPOSE AB 1721

California Association Of Life Underwriters
Committee On Moral Concerns
Traditional Values Coalition

Neutral

Association of California Life Insurance Companies

Statement AB 1721

Since the rise of the AIDS epidemic, there has been a number of cases in which insurance companies have denied coverage because of the applicant's sexual orientation. The assumption of course, is that because an applicant is gay, he must have AIDS. While most major insurers have responsibly followed the Department of Insurance regulations that prohibit such discrimination, there have been a number of cases in which an insurer has denied an application for no reason other than sexual orientation. A statutory prohibition will enhance protection and enhance the penalty for such discriminatory practices.

AB 1721 prohibits health insurance discrimination on the grounds of sexual orientation. This bill prohibits any health care service plan from refusing to provide coverage to an applicant, issue, or cancel a subscription on the grounds of sexual orientation. Race, color, religion, national origin, ancestry, or sexual orientation should not constitute a condition or risk for which a higher premium, or charge may be required of the subscriber for that coverage.

Any health care service plan that violates this section shall be assessed a civil penalty in an amount not less than \$1,000 and not more than \$5,000.

Because AIDS has been popularly associated with gay men, some members of the insurance industry have responded to AIDS with calls for anti-gay discrimination in issuing policies. One health insurance company distributed an "AIDS profile" which required its agents to segregate applications from those "single males without dependents that are engaged in occupations that do not require physical exertion." The occupations named restaurant employees, antique dealers, interior decorators, consultants, florists, and people in the jewelry or fashion business. These were noted as the stereotypical professional interests of gay men. Another company issued "underwriting guidelines for AIDS" urging agents to scrutinize applicants who are unmarried, who name as a life insurance beneficiary someone other than a spouse or child, or who show evidence of a sexually promiscuous or illicit lifestyle. Insurance companies have also used information about living arrangements, residence, and zip codes in an attempt to identify and then reject those applicants thought to be gay or bisexual.

The essential question remains whether insurers should be allowed to use the claim of economic necessity to exempt themselves from the prohibitions imposed upon the rest of society. The primary argument that insurers use to justify such an exemption is that discrimination is needed in order to make actuarially valid determinations.

These blatant discriminatory underwriting policies must be prohibited. Insurance is a necessity, and in light of the AIDS epidemic, individuals more than ever need to be guaranteed access to health insurance in an environment free of discrimination. I ask for your aye vote.

THIRD READING

<p>SENATE RULES COMMITTEE</p> <p>Office of Senate Floor Analyses 1100 J Street, Suite 120 445-6614</p>	Bill No.	AB 1721
	Author:	Friedman (D), et al
	Amended:	8/29/90 in Senate
	Vote Required:	Majority

Committee Votes:

Senate Floor Vote:

COMMITTEE: INS/CLAIMS/CORPS		
BILL NO.:	AB 1721	
DATE OF HEARING:	8-8-90	
SENATORS:	AYE	NO
Davis	✓	
Deppen	✓	
Doolittle		✓
C. Green	✓	
Keene		
McCorquodale	✓	
Torres	✓	
Nielsen (VC)		✓
Robbins (Ch)	✓	
TOTAL:	6	2

PLACED
ON FILE
PURSUANT
TO SENATE
RULE 28.8

Assembly Floor Vote: 43-32, Pg. 3063, 6/29/89

SUBJECT: Insurance discrimination: sexual orientation

SOURCE: National Gay Rights Advocates

DIGEST: This bill would prohibit health care service plans, life and disability insurers, and nonprofit hospital service plans from discriminating in eligibility, rates, underwriting, or use of specific factors on the basis of sexual orientation. (See analysis below for specifics.)

Senate Floor Amendments of 8/29/90:

1. Clarify that health care service plans may not charge different premium rates to individual enrollees within the same group solely on the basis of the enrollee's sex.
2. Make it a violation for any nonprofit health care service plan to 1) consider sexual orientation in its underwriting criteria, or 2) use specific information to infer sexual orientation or to require an AIDS test and clarifies that the section is not intended to change an insurer's existing authority to conduct AIDS tests. Establishes a civil penalty for each violation of not less than \$1,000 and not more than \$5,000, plus court costs.

Senate Floor Amendments of 8/28/90:

1. Strike a provision which allows health care service plans to charge different prices based on sex if such prices reflect valid actuarial data. Current law

CONTINUED

allows health care service plans, by regulation, to make such price differentials, if they can be actuarially supported.

2. Establishes definitions of what would constitute a violation of the sexual orientation discrimination by a nonprofit health care service plan and establishes penalties for violations. The definitions and penalties are identical to those established for indemnity pursuant to section two of the bill.

ANALYSIS: Current law prohibits a life or disability insurer from discriminating in eligibility or rates on the basis of race, color, religion, ancestry, or national origin.

There is no existing law which prohibits a life or disability insurer from discriminating on the basis of sexual orientation, although the Department of Insurance has adopted regulations which subject insurers to prospective cease and desist orders or injunction for violation of the Unfair Claims Practices Act based upon numerous grounds, including sex, marital status, or sexual orientation.

There is no existing law in the Knox-Keene Health Care Service Plan Act of 1975 which establishes any prohibitions for health care service plans to discriminate on the basis of race, color, national origin, ancestry, religion, sex, marital status, sexual orientation or age.

Specifics of the bill:

- 1) Prohibits health care service plans or specialized health care service plans from refusing to enter into, canceling, declining to renew, reinstating, or modifying the terms of contract because of race, color, national origin, ancestry, religion, sex, marital status, sexual orientation, or age.

Premium, price, or charge differentials because of sex or age is allowed if it is based on sound actuarial data.

- 2) Prohibits every life and disability insurer, when considering an applicant for coverage, or issuing, or canceling coverage, from engaging in the use of sexual orientation on a discriminatory basis.

Authorizes civil penalties from \$1,000 to \$5,000, plus court costs for each violation.

- 3) Prohibits health care service plans and life and disability insurers from utilizing marital status, living arrangements, occupation, gender, designation of beneficiary, zip code, or other territorial classification to establish sexual orientation. However, existing law allowing life and health insurers to conduct specific human immunodeficiency virus and existing law prohibiting health care service plans from conducting tests for the presence or evidence of human immunodeficiency virus remain unimpaired.
- 4) Prohibits nonprofit hospital service plans from refusing to cover, refusing to continue to cover, or limit the amount and extent of coverage available to individuals, or charging a different rate for the same coverage because of race, color, religion, national origin, ancestry, or sexual orientation. Authorizes civil penalties for each violation.

- 5) Specifies that adding these prohibitions against discriminatory practices shall not be construed to emit the authority of the Insurance and Corporations Commissioners to adopt regulations prohibiting discrimination or enforce regulations in effect prior to enactment of the bill.

FISCAL EFFECT: Appropriation: No Fiscal Committee: Yes Local: No

SUPPORT: (Verified 8/23/90) (Unable to reverify at the time of this writing.)

National Gay Rights Advocates (source)
California Medical Association
American Civil Liberties Union
Life AIDS Lobby
California Nurses Association
California National Organization for Woman, INC
Contra Costa County Trauma Relations Commission
National Association of Social Workers
California Teachers Association

OPPOSITION: (Verified 8/23/90) (Unable to reverify at the time of this writing.)

Committee on Moral Concerns

ARGUMENTS IN SUPPORT: According to the Senate Insurance, Claims and Corporations Committee analysis, the author, sponsor, and proponents contend that sexual orientation has no basis as a discriminating factor in the issuance of disability coverage. Further, the AIDS epidemic has seen a proliferation of applicant denial for life and disability coverage and cancellation of that coverage by insurers and health plans without valid reasons. This bill is intended to enhance consumer protections and to permit the regulator and law enforcement to act with sufficient statutory authority.

ARGUMENTS IN OPPOSITION: According to the Senate Insurance, Claims and Corporations Committee analysis, the opponent states: 1) "Private sex acts should not translate into favorable public policy."; 2) "...'sexual orientation' equal high risk... as long as insurance companies are allowed to assess risk in any form, they must be permitted to consider sexual orientation.".

THIRD READING

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1100 J Street, Suite 120 445-6614	Bill No.	AB 1721
	Author:	Friedman (D), et al
	Amended:	8/15/90 in Senate
	Vote Required:	Majority
	Committee Votes:	Senate Floor Vote:

COMMITTEE: INS/CLAIMS/CORPS		
BILL NO.:	AB 1721	
DATE OF HEARING:	8-8-90	
SENATORS:	AYE	NO
Davis	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Deaden	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Doolittle	<input type="checkbox"/>	<input checked="" type="checkbox"/>
C. Green	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Keene	<input type="checkbox"/>	<input type="checkbox"/>
McCorquodale	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Torres	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Nielsen (VC)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Robbins (Ch)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
TOTAL:	6	2

PLACED
ON FILE
PURSUANT
TO SENATE
RULE 28.8

Assembly Floor Vote: 43-32, Pg. 3063, 6/29/89

SUBJECT: Insurance discrimination: sexual orientation

SOURCE: National Gay Rights Advocates

DIGEST: This bill would prohibit health care service plans, life and disability insurers, and nonprofit hospital service plans from discriminating in eligibility, rates, underwriting, or use of specific factors on the basis of sexual orientation. (See analysis below for specifics.)

ANALYSIS: Current law prohibits a life or disability insurer from discriminating in eligibility or rates on the basis of race, color, religion, ancestry, or national origin.

There is no existing law which prohibits a life or disability insurer from discriminating on the basis of sexual orientation, although the Department of Insurance has adopted regulations which subject insurers to prospective cease and desist orders or injunction for violation of the Unfair Claims Practices Act based upon numerous grounds, including sex, marital status, or sexual orientation.

There is no existing law in the Knox-Keene Health Care Service Plan Act of 1975 which establishes any prohibitions for health care service plans to discriminate on the basis of race, color, national origin, ancestry, religion, sex, marital status, sexual orientation or age.

CONTINUED

Specifics of the bill:

- 1) Prohibits health care service plans or specialized health care service plans from refusing to enter into, canceling, declining to renew, reinstating, or modifying the terms of contract because of race, color, national origin, ancestry, religion, sex, marital status, sexual orientation, or age.

Premium, price, or charge differentials because of sex or age is allowed if it is based on sound actuarial data.

- 2) Prohibits every life and disability insurer, when considering an applicant for coverage, or issuing, or canceling coverage, from engaging in the use of sexual orientation on a discriminatory basis.

Authorizes civil penalties from \$1,000 to \$5,000, plus court costs for each violation.

- 3) Prohibits health care service plans and life and disability insurers from utilizing marital status, living arrangements, occupation, gender, designation of beneficiary, zip code, or other territorial classification to establish sexual orientation. However, existing law allowing life and health insurers to conduct specific human immunodeficiency virus and existing law prohibiting health care service plans from conducting tests for the presence or evidence of human immunodeficiency virus remain unimpaired.

- 4) Prohibits nonprofit hospital service plans from refusing to cover, refusing to continue to cover, or limit the amount and extent of coverage available to individuals, or charging a different rate for the same coverage because of race, color, religion, national origin, ancestry, or sexual orientation.

- 5) Specifies that adding these prohibitions against discriminatory practices shall not be construed to emit the authority of the Insurance and Corporations Commissioners to adopt regulations prohibiting discrimination or enforce regulations in effect prior to enactment of the bill.

FISCAL EFFECT: Appropriation: No Fiscal Committee: Yes Local: No

SUPPORT: (Verified 8/23/90)

National Gay Rights Advocates (source)
California Medical Association
American Civil Liberties Union
Life AIDS Lobby
California Nurses Association
California National Organization for Woman, INC
Contra Costa County Trauma Relations Commission
National Association of Social Workers
California Teachers Association

OPPOSITION: (Verified 8/23/90)

Committee on Moral Concerns

ARGUMENTS IN SUPPORT: According to the Senate Insurance, Claims and Corporations Committee analysis, the author, sponsor, and proponents contend that sexual orientation has no basis as a discriminating factor in the issuance of disability coverage. Further, the AIDS epidemic has seen a proliferation of applicant denial for life and disability coverage and cancellation of that coverage by insurers and health plans without valid reasons. This bill is intended to enhance consumer protections and to permit the regulator and law enforcement to act with sufficient statutory authority.

ARGUMENTS IN OPPOSITION: According to the Senate Insurance, Claims and Corporations Committee analysis, the opponent states: 1) "Private sex acts should not translate into favorable public policy."; 2) "... 'sexual orientation' equal high risk... as long as insurance companies are allowed to assess risk in any form, they must be permitted to consider sexual orientation."

ASSEMBLY FLOOR VOTE:

ASSEMBLY BILL NO. 1721 (Friedman)—An act to add Section 1365.5 to the Health and Safety Code, and to amend Section 10140 of the Insurance Code, relating to health coverage.

Bill read third time, and passed by the following vote:

AYES—43

Arcas	Cortese	Hayden	O'Connell
Bane	Costa	Hughes	Polanco
Bates	Eastin	Isenberg	Roos
Bronzan	Elder	Johnston	Roybal-Allard
Burton	Epple	Katz	Sher
Calderon	Farr	Killea	Speier
Campbell	Fillante	Kiehs	Tanner
Chacon	Friedman	Lempert	Vasconcellos
Clute	Hannigan	Margolin	Waters, Maxine
Condit	Harris	Moore	Mr. Speaker
Connelly	Hausor	Murray	

NOES—32

Allen	Floyd	Kelley	Nolan
Bader	Frazee	La Follette	Pringle
Baker	Frizzelle	Lancaster	Quackenbush
Bentley	Hansen	Leslie	Seastrand
Brown, Dennis	Harvey	Lewis	Statham
Chandler	Hill	McIntock	Woodruff
Clasdo	Johnson	Moynihan	Wright
Erguson	Jones	Montgomery	Wyman

Bill ordered transmitted to the Senate.

SENATE INSURANCE, CLAIMS AND CORPORATIONS COMMITTEE ASSEMBLY BILL NO. 1721

SENATOR ALAN ROBBINS, CHAIRMAN

ASSEMBLY BILL NO. 1721 (Friedman, et. al.) As Amended June 25, 1990
Health and Safety Code
Insurance Code

Source: National Gay Rights Advocates
Related Legislation: AB 2711 (Moore) of 1990
Support: California Medical Association
American Civil Liberties Union
Life AIDS Lobby
California Nurses Association
California National Organization for Woman, INC
Opposition: Committee on Moral Concerns
Interest: Department of Corporations
Department of Insurance

SUBJECT

Prohibits health care service plans, life and disability insurers, and nonprofit hospital service plans from discriminating in eligibility, rates, underwriting, or use of specific factors on the basis of sexual orientation.

DIGEST

1] Description: This bill:

1) Prohibits health care service plans or specialized health care service plans from refusing to enter into, canceling, declining to renew, reinstating, or modifying the terms of contract because of race, color, national origin, ancestry, religion, sex, marital status, sexual orientation, or age.

Premium, price, or charge differentials because of sex or age is allowed if it is based on sound actuarial data.

2) Prohibits every life and disability insurer, when considering an applicant for coverage, or issuing, or canceling coverage, from engaging in the use of sexual orientation on a discriminatory basis.

Authorizes district attorneys or city attorneys to recover civil penalties from \$1,000 to \$5,000 for each violation.

3) Prohibits health care service plans and life and disability insurers from utilizing marital status, living arrangements, occupation, gender, designation of beneficiary, zip code, or other territorial classification to establish sexual orientation. However, existing law allowing life and health insurers to conduct specific human immunodeficiency virus and existing law prohibiting health care service plans from conducting tests for the presence or evidence of human immunodeficiency virus remain unimpaired.

4) Prohibits nonprofit hospital service plans from refusing to cover, refusing to continue to cover, or limit the amount and extent of coverage available to individuals, or charging a different rate for the same coverage because of race, color, religion, national origin, ancestry, or sexual orientation.

5) Specifies that adding these prohibitions against discriminatory practices shall not be construed to emit the authority of the Insurance and Corporations Commissioners to adopt regulations prohibiting discrimination or enforce regulations in effect prior to enactment of the bill.

2] Background: Current law prohibits a life or disability insurer from discriminating in eligibility or rates on the basis of race, color, religion, ancestry; or national origin.

There is no existing law which prohibits a life or disability insurer from discriminating on the basis of sexual orientation, although the Department of Insurance has adopted regulations which subject insurers to prospective cease and desist orders or injunction for violation of the Unfair Claims Practices Act based upon numerous grounds, including sex, marital status, or sexual orientation.

There is no existing law in the Knox-Keene Health Care Service Plan Act of 1975 which establishes any prohibitions for health care service plans to discriminate on the basis of race, color, national origin, ancestry, religion, sex, marital status, sexual orientation or age.

FISCAL EFFECT Fiscal Committee: No

STAFF COMMENTS

The author, sponsor, and proponents contend that sexual orientation has no basis as a discriminating factor in the issuance of disability coverage. Further, the AIDS epidemic has seen a proliferation of applicant denial for life and disability coverage and cancellation of that coverage by insurers and health plans without valid reasons. This bill is intended to enhance consumer protections and to permit the regulator and law enforcement to act with sufficient statutory authority.

The opponent states: 1) "Private sex acts should not translate into favorable public policy."; 2) "...'sexual orientation' equal high risk... as long as insurance companies are allowed to assess risk in any form, they must be permitted to consider sexual orientation."

AB 2711 (Moore) of 1990, sponsored by the California Senior Legislature, prohibits health care service plans, life and disability insurers, and nonprofit hospital plans from discriminating solely on basis of age.

SAL BIANCO
Consultant

ASSEMBLY BILL NO. 1721

TIP PHABMIXAY
Senate Fellow

08/08/90

AMENDED IN SENATE AUGUST 15, 1990

AMENDED IN SENATE JUNE 25, 1990

AMENDED IN SENATE JULY 20, 1989

AMENDED IN ASSEMBLY JUNE 26, 1989

AMENDED IN ASSEMBLY MAY 11, 1989

CALIFORNIA LEGISLATURE—1989-90 REGULAR SESSION

ASSEMBLY BILL

No. 1721

**Introduced by Assembly Members Friedman, Bates,
Burton, Murray, Roos, Speier, Tucker, and Vasconcellos
(Coauthors: Senators Marks, Roberti, and Rosenthal)**

March 9, 1989

An act to add Section 1365.5 to the Health and Safety Code, and to amend Section 10140 of, and to add Section 11512.193 to, the Insurance Code, relating to health coverage.

LEGISLATIVE COUNSEL'S DIGEST

AB 1721, as amended, Friedman. Insurance discrimination: sexual orientation.

(1) Existing law prohibits health care service plans from canceling coverage except for specified reasons.

This bill would prohibit health care service plans from refusing to enter into, canceling, or declining to renew or reinstate a contract because of race, color, national origin, ancestry, religion, sex, marital status, sexual orientation, or age. It would also prohibit modification of the terms of the contract, including terms relating to price, for those reasons, except that premium, price, or charge differentials based on sex or age would be permitted if based upon specified data.

(2) Existing law prohibits life and disability insurers from discriminating in eligibility or rates for insurance on the basis

of race, color, religion, ancestry, or national origin.

This bill would prohibit life and disability insurers from discriminating, as to eligibility or rates, on the basis of sexual orientation. The bill would prohibit these insurers from considering sexual orientation in their underwriting criteria or utilizing marital status, living arrangements, occupation, gender, beneficiary designation, or zip codes or other territorial classifications to establish sexual orientation or to determine whether to require a test for human immunodeficiency virus or antibodies thereto. However, the bill would not limit existing authority of insurers to require these tests or existing authority of the Insurance Commissioner to adopt and enforce antidiscrimination regulations. The bill would authorize ~~district attorneys or city attorneys, as specified, to recover~~ civil penalties from \$1,000 to \$5,000 for each violation.

(3) This bill would also prohibit nonprofit hospital service plans from refusing to cover, or refusing to continue to cover, or limiting the amount, extent, or kind of coverage available to an individual, or charging a different rate for the same coverage because of race, color, religion, national origin, ancestry, or sexual orientation.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1365.5 is added to the Health
2 and Safety Code, to read:
3 1365.5. (a) No health care service plan or specialized
4 health care service plan shall refuse to enter into any
5 contract or shall cancel or decline to renew or reinstate
6 any contract because of the race, color, national origin,
7 ancestry, religion, sex, marital status, sexual orientation,
8 or age of any contracting party, prospective contracting
9 party, or person reasonably expected to benefit from that
10 contract as a subscriber, enrollee, member, or otherwise.
11 (b) The terms of any contract shall not be modified,
12 and the benefits or coverage of any contract shall not be
13 subject to any limitations, exceptions, exclusions,

1 reductions, copayments, coinsurance, deductibles,
2 reservations, or premium, price, or charge differentials,
3 or other modifications because of the race, color, national
4 origin, ancestry, religion, sex, marital status, sexual
5 orientation, or age of any contracting party, potential
6 contracting party, or person reasonably expected to
7 benefit from that contract as a subscriber, enrollee,
8 member, or otherwise; except that premium, price, or
9 charge differentials because of the sex or age of any
10 individual when based on objective, valid, and up-to-date
11 statistical and actuarial data are not prohibited.

12 (c) It shall be deemed a violation of subdivision (a) for
13 any health care service plan to utilize marital status,
14 living arrangements, occupation, gender, beneficiary
15 designation, zip codes or other territorial classification, or
16 any combination thereof for the purpose of establishing
17 sexual orientation. Nothing in this section shall be
18 construed to alter in any manner the existing law
19 prohibiting health care service plans from conducting
20 tests for the presence of human immunodeficiency virus
21 or evidence thereof.

22 (d) This section shall not be construed to limit the
23 authority of the commissioner to adopt or enforce
24 regulations prohibiting discrimination because of sex,
25 marital status, or sexual orientation.

26 SEC. 2. Section 10140 of the Insurance Code is
27 amended to read:

28 10140. (a) No admitted insurer, licensed to issue life
29 or disability insurance, shall fail or refuse to accept an
30 application for that insurance, to issue that insurance to
31 an applicant therefor, or issue or cancel that insurance,
32 under conditions less favorable to the insured than in
33 other comparable cases, except for reasons applicable
34 alike to persons of every race, color, religion, national
35 origin, ancestry, or sexual orientation. Race, color,
36 religion, national origin, ancestry, or sexual orientation
37 shall not, of itself, constitute a condition or risk for which
38 a higher rate, premium, or charge may be required of the
39 insured for that insurance.

40 (b) It shall be deemed a violation of subdivision (a) for

1 any insurer to consider sexual orientation in its
2 underwriting criteria or to utilize marital status, living
3 arrangements, occupation, gender, beneficiary
4 designation, zip codes or other territorial classification
5 within this state, or any combination thereof for the
6 purpose of establishing sexual orientation or determining
7 whether to require a test for the presence of the human
8 immunodeficiency virus or antibodies to that virus,
9 where that testing is otherwise permitted by law.
10 Nothing in this section shall be construed to alter, expand,
11 or limit in any manner the existing law respecting the
12 authority of insurers to conduct tests for the presence of
13 human immunodeficiency virus or evidence thereof.

14 (c) Any insurer that knowingly violates this section
15 shall for each violation be assessed a civil penalty in an
16 amount not less than one thousand dollars (\$1,000) and
17 not more than five thousand dollars (\$5,000) plus court
18 costs, as determined by the court. ~~The penalty may be
19 recovered by, and shall be paid to, the district attorney of
20 any county, or the city attorney of any city, in which a
21 violation occurs. The district attorney and city attorney
22 shall have concurrent jurisdiction to enforce this
23 provision with respect to violations occurring within a
24 city.~~

25 (d) This section shall not be construed to limit the
26 authority of the commissioner to adopt regulations
27 prohibiting discrimination because of sex, marital status,
28 or sexual orientation or to enforce these regulations,
29 whether adopted before or on or after January 1, 1991.

30 SEC. 3. Section 11512.193 is added to the Insurance
31 Code, to read:

32 11512.193. (a) No nonprofit hospital service plan
33 issuing, providing, or administering an individual or
34 group nonprofit hospital service plan contract entered
35 into, issued, or amended on or after January 1, 1991, shall
36 refuse to cover, or refuse to continue to cover, or limit the
37 amount, extent, or kind of coverage available to an
38 individual, or charge a different rate for the same
39 coverage because of race, color, religion, national origin,
40 ancestry, or sexual orientation.

1 (b) This section does not limit the authority of the
2 commissioner to adopt regulations prohibiting
3 discrimination because of sex, marital status, or sexual
4 orientation, or to enforce those regulations, whether
5 adopted before, on, or after January 1, 1991.

o

AMENDED IN SENATE AUGUST 29, 1990
AMENDED IN SENATE AUGUST 15, 1990
AMENDED IN SENATE JUNE 25, 1990
AMENDED IN SENATE JULY 20, 1989
AMENDED IN ASSEMBLY JUNE 26, 1989
AMENDED IN ASSEMBLY MAY 11, 1989

CALIFORNIA LEGISLATURE—1989-90 REGULAR SESSION

ASSEMBLY BILL

No. 1721

Introduced by Assembly Members Friedman, Bates,
Burton, Murray, Roos, Speier, Tucker, and Vasconcellos
(Coauthors: Senators Marks, Roberti, and Rosenthal)

March 9, 1989

An act to add Section 1365.5 to the Health and Safety Code, and to amend Section 10140 of, and to add Section 11512.193 to, the Insurance Code, relating to health coverage.

LEGISLATIVE COUNSEL'S DIGEST

AB 1721, as amended, Friedman. Insurance discrimination: sexual orientation.

(1) Existing law prohibits health care service plans from canceling coverage except for specified reasons.

This bill would prohibit health care service plans from refusing to enter into, canceling, or declining to renew or reinstate a contract because of race, color, national origin, ancestry, religion, sex, marital status, sexual orientation, or age. It would also prohibit modification of the terms of the contract, including terms relating to price, for those reasons, except that premium, price, or charge differentials based on sex or age would be permitted if based upon specified data.

The bill would prohibit certain provisions from being construed to permit a health care service plan to charge different premium rates to individual enrollees within the same group solely on the basis of the enrollee's sex.

(2) Existing law prohibits life and disability insurers from discriminating in eligibility or rates for insurance on the basis of race, color, religion, ancestry, or national origin.

This bill would prohibit life and disability insurers from discriminating, as to eligibility or rates, on the basis of sexual orientation. The bill would prohibit these insurers from considering sexual orientation in their underwriting criteria or utilizing marital status, living arrangements, occupation, gender, beneficiary designation, or zip codes or other territorial classifications to establish sexual orientation or to determine whether to require a test for human immunodeficiency virus or antibodies thereto. However, the bill would not limit existing authority of insurers to require these tests or existing authority of the Insurance Commissioner to adopt and enforce antidiscrimination regulations. The bill would authorize civil penalties from \$1,000 to \$5,000 for each violation.

(3) This bill would also prohibit nonprofit hospital services plans from refusing to cover, or refusing to continue to cover, or limiting the amount, extent, or kind of coverage available to an individual, or charging a different rate for the same coverage because of race, color, religion, national origin, ancestry, or sexual orientation. *The bill would prohibit these plans from considering sexual orientation in their underwriting criteria or utilizing marital status, living arrangements, occupation, gender, beneficiary designation, or zip codes or other territorial classifications to establish sexual orientation or to determine whether to require a test for human immunodeficiency virus or antibodies thereto. However, the bill would not limit the existing authority of the plans to require these tests or the existing authority of the Insurance Commissioner to adopt and enforce antidiscrimination regulations. The bill would authorize civil penalties from \$1,000 to \$5,000 for each violation.*

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1365.5 is added to the Health
2 and Safety Code, to read:

3 1365.5. (a) No health care service plan or specialized
4 health care service plan shall refuse to enter into any
5 contract or shall cancel or decline to renew or reinstate
6 any contract because of the race, color, national origin,
7 ancestry, religion, sex, marital status, sexual orientation,
8 or age of any contracting party, prospective contracting
9 party, or person reasonably expected to benefit from that
10 contract as a subscriber, enrollee, member, or otherwise.

11 (b) The terms of any contract shall not be modified,
12 and the benefits or coverage of any contract shall not be
13 subject to any limitations, exceptions, exclusions,
14 reductions, copayments, coinsurance, deductibles,
15 reservations, or premium, price, or charge differentials,
16 or other modifications because of the race, color, national
17 origin, ancestry, religion, sex, marital status, sexual
18 orientation, or age of any contracting party, potential
19 contracting party, or person reasonably expected to
20 benefit from that contract as a subscriber, enrollee,
21 member, or otherwise; except that premium, price, or
22 charge differentials because of the sex or age of any
23 individual when based on objective, valid, and up-to-date
24 statistical and actuarial data are not prohibited. *Nothing*
25 *in this section shall be construed to permit a health care*
26 *service plan to charge different premium rates to*
27 *individual enrollees within the same group solely on the*
28 *basis of the enrollee's sex.*

29 (c) It shall be deemed a violation of subdivision (a) for
30 any health care service plan to utilize marital status,
31 living arrangements, occupation, gender, beneficiary
32 designation, zip codes or other territorial classification, or
33 any combination thereof for the purpose of establishing
34 sexual orientation. Nothing in this section shall be
35 construed to alter in any manner the existing law
36 prohibiting health care service plans from conducting
37 tests for the presence of human immunodeficiency virus
38 or evidence thereof.

69

1 (d) This section shall not be construed to limit the
2 authority of the commissioner to adopt or enforce
3 regulations prohibiting discrimination because of sex,
4 marital status, or sexual orientation.

5 SEC. 2. Section 10140 of the Insurance Code is
6 amended to read:

7 10140. (a) No admitted insurer, licensed to issue life
8 or disability insurance, shall fail or refuse to accept an
9 application for that insurance, to issue that insurance to
10 an applicant therefor, or issue or cancel that insurance,
11 under conditions less favorable to the insured than in
12 other comparable cases, except for reasons applicable
13 alike to persons of every race, color, religion, national
14 origin, ancestry, or sexual orientation. Race, color,
15 religion, national origin, ancestry, or sexual orientation
16 shall not, of itself, constitute a condition or risk for which
17 a higher rate, premium, or charge may be required of the
18 insured for that insurance.

19 (b) It shall be deemed a violation of subdivision (a) for
20 any insurer to consider sexual orientation in its
21 underwriting criteria or to utilize marital status, living
22 arrangements, occupation, gender, beneficiary
23 designation, zip codes or other territorial classification
24 within this state, or any combination thereof for the
25 purpose of establishing sexual orientation or determining
26 whether to require a test for the presence of the human
27 immunodeficiency virus or antibodies to that virus,
28 where that testing is otherwise permitted by law.
29 Nothing in this section shall be construed to alter, expand,
30 or limit in any manner the existing law respecting the
31 authority of insurers to conduct tests for the presence of
32 human immunodeficiency virus or evidence thereof.

33 (c) Any insurer that knowingly violates this section
34 shall for each violation be assessed a civil penalty in an
35 amount not less than one thousand dollars (\$1,000) and
36 not more than five thousand dollars (\$5,000) plus court
37 costs, as determined by the court.

38 (d) This section shall not be construed to limit the
39 authority of the commissioner to adopt regulations
40 prohibiting discrimination because of sex, marital status,

1 or sexual orientation or to enforce these regulations,
2 whether adopted before or on or after January 1, 1991.

3 SEC. 3. Section 11512.193 is added to the Insurance
4 Code, to read:

5 11512.193. (a) No nonprofit hospital service plan
6 issuing, providing, or administering an individual or
7 group nonprofit hospital service plan contract entered
8 into, issued, or amended on or after January 1, 1991, shall
9 shall refuse to cover, or refuse to continue to cover, or
10 limit the amount, extent, or kind of coverage available to
11 an individual, or charge a different rate for the same
12 coverage because of race, color, religion, national origin,
13 ancestry, or sexual orientation.

14 (b) *It shall be deemed a violation of subdivision (a)*
15 *for any plan to consider sexual orientation in its*
16 *underwriting criteria or to utilize marital status, living*
17 *arrangements, occupation, gender, beneficiary*
18 *designation, zip codes or other territorial classification*
19 *within this state, or any combination thereof, for the*
20 *purpose of establishing sexual orientation or determining*
21 *whether or not to require a test for the presence of the*
22 *human immunodeficiency virus or antibodies to that*
23 *virus, where that testing is otherwise permitted by law.*
24 *Nothing in this section shall be construed to alter, expand,*
25 *or limit in any manner the existing law respecting the*
26 *authority of insurers to conduct tests for the presence of*
27 *human immunodeficiency virus or evidence thereof.*

28 (c) *Any plan that knowingly violates this section shall,*
29 *for each violation, be assessed a civil penalty in an amount*
30 *not less than one thousand dollars (\$1,000) and not more*
31 *than five thousand dollars (\$5,000) plus court costs, as*
32 *determined by the court.*

33 (d) This section does not limit the authority of the
34 commissioner to adopt regulations prohibiting
35 discrimination because of sex, marital status, or sexual
36 orientation, or to enforce those regulations, whether
37 adopted before, on, or after January 1, 1991.

AB 1721 (Friedman)
Senate Third Reading

STATEMENT

* Because gay men have been the hardest hit by the AIDS epidemic, some health insurers have endeavored to cut their losses by categorically denying health coverage on the basis of sexual orientation.

* One example was a company that refused to write health policies for single men residing in San Francisco.

* Another longstanding case was the recently settled case against Great Republic Insurance Co. Great Republic required its agents to submit a supplemental questionnaire to single men with no dependents working in jobs that require little physical exertion, such as floral design or interior decorating.

* The settlement in Great Republic, which only applies to Great Republic, prohibits discrimination on the basis of sexual orientation and further precludes the use of factors such as living arrangements, beneficiary and ZIP code to establish sexual orientation.

* The settlement is consistent with the provisions of AB 1721. My bill prohibits discrimination on the basis of sexual orientation in the provision of health coverage by health care service plans, life and disability insurers and non-profit hospital service plans.

* The bill is supported by California Medical Assn., California Nurses Assn., LIFE AIDS Lobby, California Teachers Assn., and California NOW.

* The current version of the bill has removed all opposition from the administration and the insurance industry. (SENATOR ROBBINS - ONLY KNOWN OPPOSITION IS FROM TRADITIONAL VALUES COALITION AND COMMITTEE ON MORAL CONCERNS, BASED ON THEIR DISTASTE FOR GAY MEN AND LESBIANS).

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Assembly California Legislature

TERRY B. FRIEDMAN

ASSEMBLYMAN, FORTY-THIRD DISTRICT

CHAIRMAN
Ways and Means Subcommittee
on Health & Human Services
Public Safety Subcommittee
on Drug Abuse

MEMBER
Education
Judiciary
Natural Resources
Public Safety
Ways and Means

September 7, 1990

The Honorable George Deukmejian
Governor, State of California
State Capitol
Sacramento, CA 95814

Dear Governor Deukmejian:

I respectfully request your signature on AB 1721 which would prohibit life and disability insurers, health care service plans and nonprofit hospital service plans from discriminating on the basis of sexual orientation.

Because gay men have been the hardest hit by the AIDS epidemic, some providers of health care coverage have attempted to cut their losses by categorically denying health coverage on the basis of sexual orientation.

The most prominent case of such discrimination involved Great Republic Insurance Company which required its agents to submit a supplemental questionnaire to single men with no dependents working in jobs that require little physical exertion. In a recent non-precedential settlement of that case, Great Republic agreed not to base its decisions on sexual orientation or factors that might be used to establish sexual orientation.

AB 1721 reflects that settlement by prohibiting the use of sexual orientation or factors to establish sexual orientation in decisions regarding health care coverage. The provisions relative to health care service plans replicate regulations executed by the Department of Corporations. The Department of Insurance and the insurance industry guided the development of language covering life and disability insurers and nonprofit hospital service plans. As a result, all known opposition has been removed from the bill.

This measure does not alter existing law which permits a person's medical condition (e.g. AIDS, cancer) to be used for underwriting purposes or for denial of an application.

The Hon. George Deukmejian
September 7, 1990
Page Two

AB 1721 is simply a matter of fairness. Sexual orientation is not a medical condition, and it is not a lifestyle. Despite the rationalizations of some insurers, sexual orientation is not a predictor of life style or future medical conditions. Thus, sexual orientation is not an appropriate underwriting tool.

Prohibiting insurance discrimination on the basis of sexual orientation also is not an issue of condoning or rebuking homosexuality. Gay men have as much right to health care coverage as other Californians.

I urge your favorable consideration. Thank you.

Sincerely,



TERRY B. FRIEDMAN

TBF:rjm

6 Cal.App.4th 1455; 8 Cal.Rptr.2d 593

**Larry BEATY, et al., Plaintiffs
and Appellants,**

v.

**TRUCK INSURANCE EXCHANGE,
Defendant and Respondent.**

No. C010475.

Court of Appeal, Third District.

May 29, 1992.

Rejected applicants for umbrella liability policy brought action against insurer alleging violation of civil rights. The Superior Court, Sacramento County, No. 509180, Joe S. Gray, J., sustained insurer's demurrer, and appeal was taken. The Court of Appeal, Puglia, P.J., held that insurer's refusal to issue unmarried homosexual couple joint umbrella policy under same terms and conditions as offered to married cou-

ples did not constitute unlawful discrimination in violation of Unruh Act.

Affirmed.

1. Civil Rights ⇐118

Insurer's refusal to issue unmarried homosexual couple joint umbrella policy under same terms and conditions as offered to married couples did not constitute unlawful discrimination in violation of Unruh Act, which forbids discrimination against individuals on basis of sexual orientation; insurer's policy legitimately distinguished between married and unmarried couples, and not on basis of sexual orientation. West's Ann.Cal.Civ.Code § 51 et seq.

2. Civil Rights ⇐119, 123

Unruh Act, which secures equal access to public accommodations and prohibits discrimination by business establishments, does not prohibit discrimination on basis of marital status. West's Ann.Cal.Civ.Code § 51 et seq.

3. Civil Rights ⇐118

Insurer's policy of issuing joint umbrella policy only to married persons did not constitute "arbitrary" discrimination, in violation of Unruh Act; insurer could reasonably conclude that, given legal unity of interest between husband and wife, there was no significant risk in covering both insured and his or her spouse with joint policy for single premium, and that relationship of unmarried couple lacked assurance of permanence necessary to assess with confidence risk insured against in joint policy. West's Ann.Cal.Civ.Code § 51 et seq.

Paul J. Dion, San Francisco, Maureen A. Sheehy, Los Angeles, Feldman, Waldman & Kline, Steven D. Rathfon, and Joyce M. Norcini, San Francisco, for plaintiffs and appellants.

Craig H. Bell, Waldman, Graham & Chuang, Los Angeles, for defendant and respondent.

PUGLIA, Presiding Justice.

The issue presented is whether an insurer violates the Unruh Civil Rights Act (Civ. Code, § 51 et seq.; hereafter referred to as the Unruh Act) when it refuses to offer a couple cohabitating in a homosexual relationship the same insurance policy and at the same premium it regularly offers to married couples. Plaintiffs Larry Beaty and Boyce Hinman applied to defendant Truck Insurance Exchange for a joint umbrella liability insurance policy. Defendant denied the application because joint umbrella policies are issued only to married couples. Defendant offered instead to issue each plaintiff individual umbrella coverage. Plaintiffs refused because they wanted a joint policy at the same premium as would be charged a married couple.

Plaintiffs brought suit claiming, inter alia, defendant's refusal to issue them a joint umbrella policy under the same terms and conditions as defendant offers to married couples constitutes unlawful discrimination in violation of the Unruh Act. The trial court sustained defendant's demurrer without leave to amend and entered judgment of dismissal.

On appeal, plaintiffs reiterate their claim defendant violated the Unruh Act by unlawfully discriminating against them on the basis of (1) sexual orientation and (2) marital status. We shall reject plaintiffs' contentions and affirm the judgment.

I

For purposes of this appeal, we accept as true all facts properly alleged in the complaint. (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213-214, 197 Cal.Rptr. 783, 673 P.2d 660.) Plaintiffs are a homosexual couple who have lived together and shared the common necessities of life for approximately 18 years. For the past eight years plaintiffs have owned a home as joint tenants. They maintain a joint credit card account and a joint bank account, and jointly own two cars and the furnishings in their home. Plaintiffs each have wills and life insurance policies naming the other as primary beneficiary. They have also been

issued joint homeowners and automobile insurance policies by defendant.

In February 1986, plaintiffs applied to defendant for a joint umbrella liability insurance policy in the amount of one million dollars.¹ This policy was sought to provide plaintiffs with additional liability coverage over and above that provided by their existing homeowners and automobile policies. Defendant refused to issue plaintiffs a joint umbrella policy for a single premium because such policies are issued only to married couples. Instead, defendant offered plaintiffs separate umbrella policies, each with its own premium. Plaintiffs refused the offer.

In July 1988, plaintiffs requested a ruling from the California Department of Insurance (Department) whether defendant's refusal to issue them a joint umbrella policy violated sections 679.71 and 1852 of the Insurance Code. In March 1989, the Department informed plaintiffs no action would be taken on their request and plaintiffs were free to "to pursue any legal remedies available" to them.

In September 1989, plaintiffs filed their first amended complaint (complaint) in superior court seeking damages and injunctive and declaratory relief. Plaintiffs asserted the refusal to issue them a joint umbrella policy violated (1) section 51 et seq. of the Civil Code (the Unruh Act); (2) section 679.71 of the Insurance Code, which bars an insurer from discrimination in the issuance of policies; and (3) section 1861.05 of the Insurance Code, which bars discrimination in the setting of rates for insurance policies.

Defendant demurred to plaintiff's complaint on various grounds, including failure to exhaust administrative remedies, the Insurance Code offered plaintiffs their exclusive remedy, and discrimination on the ba-

1. "[Umbrella liability policies] are policies of insurance sold at comparatively modest cost to pick up where primary coverages end, in order to provide an extended protection up to one million, five million, ten million, or more. It gives a financial security, as well as peace of mind, to the individual purchasing such coverage who is hopeful that he will never be involved in any substantial claim or lawsuit, but, if he is, is desirous of not losing the security it

sis of marital status is not barred by the Unruh Act. The trial court sustained the demurrer without leave to amend "on whatever grounds are available to uphold [the court's ruling]. . . ." A judgment was entered dismissing the action in its entirety.

On appeal plaintiffs argue only that defendant's refusal to issue them a joint umbrella policy constitutes arbitrary and unlawful discrimination within the meaning of the Unruh Act. For the reasons which follow, we shall hold plaintiffs have not stated and cannot state a cause of action as a matter of law.²

II

At the outset, we note this case bears a remarkable similarity to *Hinman v. Department of Personnel Admin.* (1985) 167 Cal.App.3d 516, 213 Cal.Rptr. 410 (hereafter cited as *Hinman*). This similarity is hardly coincidental, as the plaintiffs in *Hinman*—Boyce Hinman and Larry Beaty—are the plaintiffs in the instant action.

At issue in *Hinman* was whether the denial to a cohabitant in a homosexual relationship with a state employee of dental insurance coverage under that employee's group policy unlawfully discriminated against such employee in violation of the equal protection clause of the state Constitution. *Hinman*, a state employee, applied for dental coverage for himself and for Beaty under the prepaid group plan offered through *Hinman's* employment. When coverage for Beaty was denied, *Hinman* and Beaty brought suit against the Department of Personnel Administration. They charged the refusal to provide coverage to Beaty constituted discrimination on the basis of sexual orientation and marital status.

may have taken a lifetime to acquire." (Appleman, *Insurance Law and Practice* (Rev.1981) Vol. 8A, § 4909.85.)

2. Defendant requests we take judicial notice of various items. We deem it unnecessary to take judicial notice of the items specified and the requests are therefore denied.

We rejected these claims. (*Hinman*, supra, 167 Cal.App.3d at pp. 523-531, 213 Cal.Rptr. 410.) No evidence was presented showing the denial of coverage to Beatty was on the basis of his or Hinman's sexual orientation. Indeed, the record in that case revealed all unmarried employees received identical treatment. The distinction was simply "on the basis of married and unmarried employees ... not between heterosexual or homosexual ones." (*Id.* at pp. 525-526, 213 Cal.Rptr. 410.)

With regard to the claim the denial of coverage was based on marital status in violation of the equal protection clause, we noted statutory distinctions based upon marital status need only be rationally related to a legitimate state purpose. (*Id.* at p. 526, 213 Cal.Rptr. 410.) Given the state's legitimate interest in promoting marriage, and noting that interest is furthered by conferring statutory rights upon married persons which are not afforded unmarried partners, we had no difficulty in upholding the decision of the Department of Personnel Administration denying benefits to Beatty. (*Id.* at pp. 526-529, 213 Cal.Rptr. 410.)

Plaintiffs assert that because *Hinman* turned upon the interpretation of constitutional law, i.e., the equal protection clause of the state Constitution, while the instant case involves interpretation of the Unruh Act, *Hinman* is "entirely irrelevant to the legal issues raised here." Plaintiffs are entirely free to change legal theories. As we explain, however, plaintiff's change of legal theory does not effect a different result.

III

[1] The decisions hold the Unruh Act forbids discrimination against individuals on the basis of sexual orientation.³ (E.g., *Rolon v. Kulwitzky* (1984) 153 Cal.App.3d 289, 292, 200 Cal.Rptr. 217; *Curran v. Mount Diablo Council of the Boy Scouts* (1983) 147 Cal.App.3d 712, 195 Cal.Rptr.

325; *Hubert v. Williams* (1982) 133 Cal.App.3d Supp. 1, 5, 184 Cal.Rptr. 161; see also *Stoumen v. Reilly* (1951) 37 Cal.2d 713, 716-717, 234 P.2d 969.) In their complaint plaintiffs charged "[defendant's] denial of joint coverage to [plaintiffs] is ... based upon the fact that they are a gay couple and, as such, is a denial of the equal service guaranteed by the Unruh Act."⁴ We disagree.

Whatever this case is about, it is not one involving discrimination on the basis of sexual orientation. Plaintiffs' complaint alleges: "Defendants have refused and continue to refuse to issue a joint 'umbrella' liability insurance policy to plaintiffs on the alleged grounds that plaintiffs are not married and that, pursuant to certain underwriting criteria adopted by defendants, such joint 'umbrella' liability insurance policies are issued solely to heterosexual married couples." Thus, plaintiffs' complaint alleges that all unmarried individuals are treated the same with regard to the issuance of umbrella policies since plaintiffs are not and cannot be married. To the extent plaintiffs were treated differently than a "married couple," it is because they are not married and not because they are homosexuals. No facts are alleged to suggest unmarried heterosexual couples, or any other unmarried persons who live together and jointly own property, are treated any differently by defendant than were plaintiffs. We presume such facts do not exist.

Accordingly, plaintiffs' attempt to hinge the instant action on what they perceive as discrimination on the basis of their sexual orientation must fail. "Homosexuals are simply a part of the larger class of unmarried persons.... [Defendant's policies] have the same effect on the entire class of unmarried persons. Rather than discriminating on the basis of sexual orientation, [defendant's policies] distinguish eligibility on the basis of marriage. There is no difference in the effect of the eligibility requirement on unmarried homosexual and unmarried heterosexual employees." (*Hin-*

4. Insurance Code section 1861.03, subdivision (a), provides in part "[t]he business of insurance shall be subject to the laws of California applicable to any other business," including the Unruh Act.

man, supra, 167 Cal.App.3d at p. 526, 213 Cal.Rptr. 410.)

We hold as a matter of law plaintiffs have not stated and can not state a viable claim for discrimination in violation of the Unruh Act on the basis of sexual orientation.

IV

Plaintiffs assert defendant's refusal to issue them a joint umbrella policy constitutes arbitrary discrimination on the basis of marital status in violation of the Unruh Act. In their brief plaintiffs argue: "There are only two possible interpretations of [defendant's] refusal to offer [plaintiffs] the same policy offered to heterosexual married couples: either [defendant] discriminates against all unmarried couples or it discriminates only against gay men and lesbians. Since neither type of discrimination is permitted under the Unruh Act, the trial court's decision to grant [sic] the demurrer and enter judgment against [plaintiffs] is incorrect and should be reversed." For several reasons, plaintiffs' arguments are unavailing.

"Enacted in 1959, the Unruh Act [Civ. Code, § 51 et seq.] secures equal access to public accommodations and prohibits discrimination by business establishments." (*Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1150, 278 Cal.Rptr. 614, 805 P.2d 873; hereafter cited as *Harris*.) Amended at various times since 1959, Civil Code section 51 now provides in pertinent part: "All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, or blindness or other physical disability are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever."

Civil Code section 52 is designed to provide an enforcement mechanism for section 51 and other provisions of law. This section states in relevant part: "Whoever denies ... or makes any discrimination, distinction or restriction on account of sex,

5. The *Harris* court concluded the repeated enumeration of specific classes contained in Civil Code sections 51 and 52, when viewed in light

color, race, religion, ancestry, national origin, or blindness or other physical disability contrary to Section 51 ... is liable for each and every offense...."

At the outset, plaintiffs are faced with a difficult hurdle: the Unruh Act makes no mention of discrimination on the basis of "marital status." Plaintiffs concede as much. While the Unruh Act has been extended to include categories not expressly enumerated in Civil Code sections 51 and 52 (e.g., *Marina Point, Ltd. v. Wolfson* (1982) 30 Cal.3d 721, 736-741, 180 Cal.Rptr. 496, 640 P.2d 115 [families with children]; *In re Cox* (1970) 3 Cal.3d 205, 212, 216-218, 90 Cal.Rptr. 24, 474 P.2d 992 [unconventional dress or physical appearance]; *Rolon v. Kulwitzky*, supra, 153 Cal.App.3d at p. 292, 200 Cal.Rptr. 217 [sexual orientation]), no court has extended the Unruh Act to claimed discrimination on the basis of marital status and we shall not be the first to do so.

Recently in *Harris*, supra, the court considered whether the Unruh Act should be extended to include "economic status" as a prohibited category of discrimination. Upon examining the history of the Unruh Act, the court came to the unremarkable conclusion the Legislature intended the scope of the Unruh Act be confined to the types of discrimination specifically enumerated therein. (52 Cal.3d at pp. 1154-1155, 278 Cal.Rptr. 614, 805 P.2d 873.) While the *Harris* court refused to overrule prior case law which extended the Unruh Act to classifications not expressed in the statute (*id.* at p. 1155, 278 Cal.Rptr. 614, 805 P.2d 873), the court made it clear future expansion of prohibited categories should be carefully weighed to insure a result consistent with legislative intent. (*Id.* at pp. 1156-1162, 278 Cal.Rptr. 614, 805 P.2d 873; see *Gayer v. Polk Gulch, Inc.* (1991) 231 Cal.App.3d 515, 522-523, 282 Cal.Rptr. 556.)⁵

[2] In light of *Harris*, we decline plaintiffs' invitation to expand the Unruh Act to include "marital status" as an additional category of prohibited discrimination.

of general principles of statutory construction, "strongly suggests" a legislative intent the protection of the Unruh Act is limited. (52 Cal.3d

There is a strong policy in this state in favor of marriage (*Elden v. Sheldon* (1988) 46 Cal.3d 267, 274-275, 250 Cal.Rptr. 254, 758 P.2d 582; *Norman v. Unemployment Ins. Appeals Bd.* (1983) 34 Cal.3d 1, 9, 192 Cal.Rptr. 134, 663 P.2d 904; *Hinman*, supra, 167 Cal.App.3d at p. 527, 213 Cal.Rptr. 410), and in the context here presented that policy would not be furthered (and in the case of an unmarried heterosexual couple, would actually be thwarted) by including marital status among the prohibited categories. It is for the Legislature, not the courts, to determine whether nonmarital relationships such as that involved in this case "deserve the statutory protection afforded the sanctity of the marriage union." (Fn. omitted; *People v. Delph* (1979) 94 Cal.App.3d 411, 416, 156 Cal.Rptr. 422.)

Moreover, the term "marital status" is hardly foreign to the Legislature. There are scores of statutes in which the Legislature has included "marital status" in anti-discrimination legislation. (E.g., Bus. & Prof.Code, § 125.6; Civ.Code, §§ 798.20, 800.25, 1812.30; Corp.Code, §§ 5047.5, 24001.5; Ed.Code, §§ 230, 45293, 88112; Elec.Code, § 308; Fin.Code, § 40101; Gov. Code, §§ 8310, 12920, 12921, 12926, 12927, 12930, 12931, 12935, 12940, 12955, 12993, 12995, 18500, 19572, 19702, 19704, 19793, 54701.12, 65583; Health & Saf.Code, §§ 1365.5, 33050, 33435, 33436, 33724, 33769, 35811, 37630, 37923, 50955, 51602; Ins.Code, § 679.71; Lab.Code, § 1735; Prob.Code, § 401; Pub. Resources Code, §§ 5080.18, 5080.34; Pub.Util.Code, §§ 453, 3542; Welf. & Inst.Code, §§ 10000, 18907.) Clearly the Legislature knows how to designate marital status as a prohibited category of discrimination when inclined to do so. Because it has not done so in the Unruh Act, we refuse to do so on our own accord.

Civil Code section 51 does not apply for a second reason, made evident by its terms: "This section shall not be construed to confer any right or privilege on a person which is conditioned or limited by law or which is

applicable alike to persons of every sex, color, race, religion, ancestry, national origin, or blindness or other physical disability." Applied to the instant facts, this part of Civil Code section 51 indicates the Unruh Act was not intended to create a right of insurance access so long as the insurer's policy is applicable alike to all persons regardless of race, color, sex, religion, etc. (Cf. *Harris*, supra, 52 Cal.3d at p. 1155, 278 Cal.Rptr. 614, 805 P.2d 873; *Gayer v. Polk Gulch, Inc.*, supra, 231 Cal.App.3d at p. 522, 282 Cal.Rptr. 556.)

Here, there is no question defendant's issuance of umbrella policies is uniform and without regard to any of the categories set forth in Civil Code section 51. Plaintiffs are simply in no position to claim they have been singled out for arbitrary treatment with regard to their application for a joint umbrella policy.

[3] Moreover, the Unruh Act prohibits "arbitrary" discrimination. (See *Harris*, supra, 52 Cal.3d at p. 1154, 278 Cal.Rptr. 614, 805 P.2d 873; *In re Cox*, supra, 3 Cal.3d at pp. 212, 216-217, 90 Cal.Rptr. 24, 474 P.2d 992.) Thus, a court must consider whether the defendant possesses a legitimate business interest which justifies different treatment: "'A business establishment may, of course, promulgate reasonable department regulations that are rationally related to the services performed and the facilities provided.'" (*Harris*, supra, 52 Cal.3d at p. 1162, 278 Cal.Rptr. 614, 805 P.2d 873, quoting *In re Cox*, supra, 3 Cal.3d at p. 217, 90 Cal.Rptr. 24, 474 P.2d 992.)

On its face there is nothing arbitrary about defendant's issuance of joint umbrella policies only to married persons. Given the legal unity of interest and the shared responsibilities attendant upon a marriage, an insurer could reasonably conclude there is no significant risk in covering both an insured and his or her spouse with a joint policy for a single premium. With regard to unmarried couples of whatever sexual

orientation, an insurer could conclude the relationship lacks the assurance of permanence necessary to assess with confidence the risks insured against in a joint umbrella policy.

on the specified classifications of race, sex, religion, etc., would represent a highly persuasive, if not dispositive, factor in our construction of the [Unruh] Act." (*Id.* at p. 1159, 278 Cal.Rptr. 614, 805 P.2d 873.)

orientation, an insurer could conclude the relationship lacks the assurance of permanence necessary to assess with confidence the risks insured against in a joint umbrella policy.

Equally important, the shared responsibilities and the legal unity of interest in a marital relationship—a status not conferred on unmarried couples whatever their sexual orientation—provide a fair and reasonable means of determining eligibility for services or benefits. (See *Norman v. Unemployment Ins. Appeals Bd.*, supra, 34 Cal.3d at pp. 8, 10, 192 Cal.Rptr. 134, 663 P.2d 904; *In re Cummings* (1982) 30 Cal.3d 870, 873-874, 180 Cal.Rptr. 826, 640 P.2d 1101.)

In *Hinman*, the state employer extended dental insurance benefits to the employee's "family members," which included only the employee's spouse and, in some instances, unmarried children up to age 23. In upholding this scheme against an equal protection attack, we held "the use of the definition of 'family member' ... is a reasonable means of administering the dental benefit program.... [R]ecognizing and favoring those with established marital and familial ties not only furthers the state's interest in promoting such relationships but assures a more readily verifiable method of proof.... [N]umerous problems of standards and difficulties of proof would arise if we imposed upon an administrative agency the function of deciding which relationships merited treatment equivalent to the treatment afforded those with formal marriages. The inevitable questions would include issues such as the factors deemed relevant, [i.e.] the length of the relationship.... The potential for administrative intrusions into rights of privacy and association would be severe if agencies bore the burden of ferreting out the "true depth" and intimacy of a relationship in order to determine whether the existence and nature of the relationship was the equivalent of marriage. [Citation.]

"The same difficulties would attend a dental benefits scheme allowing enrollment of homosexual partners. The responsible agencies would have to establish standards

which would reach the very foundations of the privacy rights of both homosexual partners in order to properly determine whether the relationship meets some arbitrary standard equating with marriage, and still exclude other unmarried nonspouses, such as roommates, acquaintances or companions.... The great potential for different opinions by the employer, insurers and unions as to who is an eligible homosexual partner could expose all parties to allegations of discriminatory treatment and the making public of any administrative examination of the sexual relationships involved." (Fn. omitted; *Hinman*, supra, 167 Cal.App.3d at p. 528, 213 Cal.Rptr. 410.)

As in *Hinman*, the fact the parties are married provides a reasonable and relevant means whereby an insurer can predict the risk involved in offering umbrella coverage. In order to assess the risk with regard to unmarried individuals, the insurer would necessarily be required to undertake a "massive intrusion" (*Elden v. Sheldon*, supra, 46 Cal.3d at p. 276, 250 Cal.Rptr. 254, 758 P.2d 582) into the private lives of applicants—e.g., inquire into their sexual fidelity and emotional and economic ties. (See *id.* at pp. 276-277, 250 Cal.Rptr. 254, 758 P.2d 582.) We see no reason why an insurer, any more than an administrative agency, should be forced to engage in such inquiry, which could only lead to inconsistent results and predictably to allegations of discriminatory treatment by the insurer. (See *ibid.*; *Hinman*, supra, 167 Cal.App.3d at p. 528, 213 Cal.Rptr. 410.)

Finally, *Harris* holds that before extending the categories set forth in the Unruh Act, the court must consider the consequences of allowing the type of claim sought by the plaintiffs: "When uncertainty arises in a question of statutory interpretation, consideration must be given to the consequences that will flow from a particular interpretation." (52 Cal.3d at p. 1165, 278 Cal.Rptr. 614, 805 P.2d 873.) What plaintiffs seek to achieve by this litigation is that both defendant and this court treat them as if they were in fact married. The result would be that all de facto couples would be treated as a married unit.

at p. 1161, 278 Cal.Rptr. 614, 805 P.2d 873.) *Harris* cautioned against further expansion of coverage under the Unruh Act: "[W]ere we writing on a clean slate, the repeated emphasis in the language of [Civil Code] sections 51 and 52

Any such holding would be contrary to the strong policy in this state favoring marriage (See *Marvin v. Marvin* (1976) 18 Cal.3d 660, 684, 134 Cal.Rptr. 815, 557 P.2d 106) and would ignore the fact de facto couples are not generally entitled to the benefits afforded to married couples. Indeed, married couples receive special consideration in a number of areas not available to unmarried individuals, including the right to bring a wrongful death action if a third party kills the other spouse (Code Civ.Proc. 377; cf. *Nieto v. City of Los Angeles* (1982) 138 Cal.App.3d 464, 470-471, 188 Cal.Rptr. 31 [holding no unlawful discrimination in refusing to extend this right to unmarried cohabitants]), the right to sue for loss of consortium and negligent infliction of emotional distress (cf. *Elden v. Sheldon*, supra, 46 Cal.3d at pp. 274-275, 277-278, 250 Cal.Rptr. 254, 758 P.2d 582 [denying this right to unmarried cohabitants]), the marital communications privilege (cf. *People v. Delph*, supra, 94 Cal. App.3d at pp. 415-416, 156 Cal.Rptr. 422 [refusing to extend this privilege to non-marital partners]), and community property laws, including the right to divide community property and to seek spousal support on the termination of marriage (Civ. Code, §§ 4800, 4801; cf. *Marvin v. Marvin*, supra, 18 Cal.3d at p. 684, fn. 24, 134 Cal.Rptr. 815, 557 P.2d 106 [refusing to extend to unmarried cohabitants the rights the Family Law Act gives to valid or putative spouses]; see also *Elden v. Sheldon*, supra, 46 Cal.3d at p. 275, 250 Cal.Rptr. 254.)

Our refusal to grant plaintiffs the relief they seek reaffirms "our recognition of a strong public policy favoring marriage. [Citation.] No similar policy favors the maintenance of nonmarital relationships.... In the absence of legislation which grants to members of a nonmarital relationship the same benefits as those granted to spouses, no basis exists in this

6. Defendant's assertions plaintiffs failed to exhaust their administrative remedies and plaintiffs' exclusive remedy is governed by the Insurance Code have been considered and are without merit.

context for extending to nonmarital relations the preferential status afforded to marital relations." (*Norman v. Unemployment Ins. Appeals Bd.*, supra, 34 Cal.3d at p. 9, 192 Cal.Rptr. 134, 663 P.2d 904.)

In light of the foregoing considerations, we must decline to extend the protection of the Unruh Act to plaintiffs even as we would to an unmarried, cohabitating heterosexual couple.

In the final analysis, plaintiffs' "real quarrel is with the California Legislature if they wish to legitimize the status of a homosexual partner. Plaintiffs may achieve the reform they seek here only by attacking Civil Code section 4100, which defines marriage to be a civil contract 'between a man and a woman.' We cannot change that law here." (*Hinman*, supra, 167 Cal.App.3d at p. 531, 213 Cal.Rptr. 410.)⁶

The judgment is affirmed.

MARLER and NICHOLSON, JJ., concur.



Harold F. BOOTHBY, Plaintiff
and Appellant,

v.

ATLAS MECHANICAL, INC., Defendant
and Respondent.

No. C009284.

Court of Appeal, Third District.

June 2, 1992.

Certified For Partial Publication *

Former employee brought suit against employer to recover compensation for un-

* Pursuant to California Rules of Court, rule 976.1, this opinion is certified for publication except for parts II, III, IV, and V of the Discussion.

used vacation time that he allegedly accrued over years of employment. The Superior Court, Sacramento County, No. 327664, John J. Boskovich, J., issued order of summary adjudication of issues, holding that employee could recover vacation pay if he could prove existence of agreement to accrue vacation time. Appeal was taken. The Court of Appeal, Nicholson, J., held that: (1) any vacation provided by employment agreement vested as employee labored; (2) employer was required to compensate employee for all vested vacation time remaining unused at termination; and (3) unused vacation time would not accumulate if employment agreement legally prevented accumulation.

Reversed and remanded in part and affirmed in part.

1. Master and Servant ⇐72

Paid vacation provided by employment agreement vests as employee labors. West's Ann.Cal.Labor Code § 227.3.

2. Master and Servant ⇐72

Because vested vacation is nonforfeitable, employer must compensate employee for all vested vacation time remaining unused at termination. West's Ann.Cal.Labor Code § 227.3.

3. Master and Servant ⇐72

Employment agreement may provide that employee does not earn additional paid vacation if specified amount of vested vacation remains unused. West's Ann.Cal.Labor Code § 227.3.

4. Master and Servant ⇐72

Unused vacation time accumulates unless employment agreement legally prevents it. West's Ann.Cal.Labor Code § 227.3.

5. Master and Servant ⇐73(1)

Any forfeiture of private employee's vested vacation time is prohibited; on termination, employee must be paid in wages for all vested but unused vacation unless

collective bargaining agreement provides for some other form of compensation. West's Ann.Cal.Labor Code § 227.3.

6. Master and Servant ⇐75

When vacation is earned during period of employment, and employee does not complete period, statute requires compensation for pro rata share of unused vacation based on percentage of period completed. West's Ann.Cal.Labor Code § 227.3.

7. Master and Servant ⇐73(1)

"Use it or lose it" vacation policy provides for forfeiture of vested vacation pay if not used within designated time, while "no additional accrual vacation policy" prevents employee from earning vacation over certain limit; former is impermissible and latter is permissible. West's Ann.Cal.Labor Code § 227.3.

8. Master and Servant ⇐72

Employee's entitlement to accumulate agreed vacation from year to year depended upon whether employment agreement included valid "no accrual" vacation policy; issue required remand where neither party's position required proof of substantive vacation policy in employment agreement. West's Ann.Cal.Labor Code § 227.3.

Gregory D. Thatch and Larry C. Larsen, Sacramento, for plaintiff and appellant.

Patricia K. Poyner, Atty. for Div. of Labor Standards Enforcement, Dept. of Indus. Relations, Berkeley, as amicus curiae, on behalf of plaintiff and appellant.

Sedgwick, Detert, Moran & Arnold and Nicholas W. Heldt, San Francisco, for defendant and respondent.

NICHOLSON, Associate Justice.

[1-3] Paid vacation provided by an employment agreement vests as the employee labors. (*Suastez v. Plastic Dress-Up Co.* (1982) 31 Cal.3d 774, 779, 183 Cal.Rptr. 846, 647 P.2d 122.) Because vested vacation is nonforfeitable, an employer must compen-

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July 20, 1992

California Supreme Court
303 - 2nd Street / So. Tower
San Francisco, CA 94107-1317

Re: *Beaty v. Truck Insurance Exchange*
Court of Appeal No. C010475
Published at 6 Cal.App.4th 1455

Request to "Grant and Hold" on
Court's Own Motion pursuant to
Rules 28(a)(1) and 29.2(c),
pending disposition of
Donahue v. FEHC, S024538

TO THE COURT:

Appellants Boyce Hinman and Larry Beaty hereby request that this Court "grant and hold" review of the above-entitled case on its own motion pursuant to Rules 28(a)(1) and Rule 29.2(c) of the California Rules of Court.

Sua Sponte "Grant and Hold." The decision of the Court of Appeal was filed in this case on May 29, 1992. The decision became final as to that court on June 28. Therefore, the deadline for filing a petition for review was July 8, 1992. A timely petition for review was not filed in this case by the previous attorneys of record for appellants. It was not until July 10, 1992, that appellants' previous attorney communicated to Thomas F. Coleman that she and her co-counsel had made a firm decision not to take the case any further and suggested that new counsel could substitute into the case to represent appellants. (See attached declaration of Thomas F. Coleman.) By that date, the time to file a petition for review had already expired. Therefore, the only relief that new counsel can request of this Court, to preserve the rights of appellants and to maintain the status quo pending the decision in *Donahue, supra*, is to suggest that the Court issue a "grant and hold" order on the Court's own motion.

Jurisdictional Deadline for Order Extending Time. This Court will lose jurisdiction to grant review on its own motion unless an order is issued on or before July 28, 1992 extending time for the Court to consider a *sua sponte* grant of review.

California Supreme Court

July 20, 1992

Page 2

Grounds for Review. The decision in the *Beaty* case involves an important question of law, namely, whether the Unruh Act (Civ.Code Sec. 51) prohibits business establishments from discriminating against unmarried couples on the basis of their marital status. That is one of the issues presently before this Court in *Donahue*. (See attached declaration of Thomas F. Coleman.) The resolution of this issue affects millions of unmarried adults who live together in California. Granting review will also secure uniformity of decision. The Court of Appeal decision in *Beaty* does not address, but in fact conflicts with administrative precedents, including two attorney general opinions (58 *Ops.Cal.Atty.Gen.* 608, 613 (1975) and 59 *Ops.Cal.Atty.Gen.* 223, 224 (1976), and a decision of this Court which cited the 1975 Attorney General opinion with approval (*Marina Point Ltd. v. Wolfson* (1982) 30 Cal.3d 721, 736). The Court of Appeal opinion also conflicts with the decision of the Fair Employment and Housing Commission in the *Donahue* case in which the Commission ruled that the Unruh Act prohibits marital status discrimination and the opinion of the Court of Appeal in *Donahue* which assumed that such discrimination was barred by the Unruh Act.

Reasons for "Grant and Hold." A "grant and hold" order has the effect of preserving the status quo in other cases where the parties could benefit from a decision in a case pending in this Court. Unless this Court "grants and holds" review in the *Beaty* case, the plaintiffs will not receive uniform application of the law, even if this Court ultimately issues a decision that the Unruh Act does prohibit marital status discrimination. Furthermore, issuing a "grant and hold" order will preserve the status quo for many administrative agencies which enforce the Unruh Act and which have interpreted the Act to prohibit marital status discrimination. Such agencies include the Los Angeles City Attorney, the San Francisco District Attorney, the Fair Employment and Housing Commission, and the Attorney General. None of these agencies were parties to or otherwise participated in the *Beaty* case in the Court of Appeal. All of these agencies currently interpret the Unruh Act to prohibit marital status discrimination. Some of them are parties to the *Donahue* case and have filed briefs in this Court in support of a broad interpretation of the Unruh Act. Unless a "grant and hold" order (or an order depublishing the Court of Appeal decision) is issued by this Court, the jurisdiction of these agencies will be eroded because the decision of the Court of Appeal will be binding statewide as the only published decision directly on point.

Judicial Economy. A "grant and hold" order also serves the interest of judicial economy. If such an order does not issue, the plaintiffs in *Beaty* will have to await a decision in *Donahue* before pursuing their case further. If this Court's decision in *Donahue* holds that marital status discrimination against unmarried couples in the context of housing is prohibited by the Unruh Act, plaintiffs will have to initiate their litigation from scratch. They will be required to relitigate whether marital status discrimination against unmarried

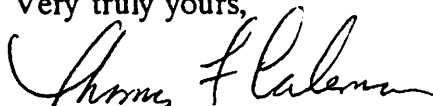
THOMAS F. COLEMAN

California Supreme Court
July 20, 1992
Page 3

couples in the context of insurance is prohibited by the Unruh Act. To do this, they will have to apply for a joint insurance policy again, and if denied, will have to initiate an administrative complaint, lawsuit, and then file another appeal. In other words, they will have to duplicate most of the current litigation. However, a favorable decision in *Donahue* and a "grant and hold" order in this case, would enable this Court to remand the matter to the Court of Appeal for reconsideration in view of its decision in *Donahue*, thus avoiding unnecessary duplication of attorney and court time. On the other hand, a "grant and hold" order will not prejudice the rights of respondent Truck Insurance Company.

For the forgoing reasons, Larry Beaty and Boyce Hinman, through their new attorneys, Thomas F. Coleman and David Link, respectfully urge this Court to issue an order on the Court's own motion to grant review in *Beaty* and defer further action pending the Court's decision in *Donahue*.

Very truly yours,



THOMAS F. COLEMAN

THOMAS F. COLEMAN
DAVID LINK

Attorneys for Appellants
Larry Beaty and Boyce Hinman

Enclosed:
Proof of Service
Declaration of Thomas F. Coleman
Substitution of Attorneys
Court of Appeal Opinion

DECLARATION OF THOMAS F. COLEMAN

I, Thomas F. Coleman, declare:

On July 17, 1992, attorney David Link and I substituted in as attorneys of record for Larry Beaty and Boyce Himnan, plaintiffs and appellants in the case of *Beaty v. Truck Insurance Exchange*, Court of Appeal No. C010475. The original substitution of attorneys form is attached hereto, with the exception of the signature of Maureen Sheehy which was faxed to me due to time constraints.

Plaintiffs' previous attorney, Maureen Sheehy, informed me for the first time on July 10, 1992, that she and her co-counsel had made a firm decision not to take the *Beaty* case any further and she suggested for the first time that they would be willing to have new counsel substitute into the case. I immediately contacted the plaintiffs and effectuated the substitution of attorneys as soon as possible.

The time for filing a petition for review in this Court expired on July 8, 1992, two days before plaintiffs' prior attorneys suggested a substitution of attorneys.

At this time, the only remedy available to plaintiffs to preserve the status quo pending this Court's decision in *Donahue v. F.E.H.C.* (1991), 2 Cal.Rptr.2d 32, 34, rev. granted, 5 Cal.Rptr.2d 781, is to request this Court to issue a "grant and hold" order as suggested in the cover letter accompanying this declaration.

The issue decided adversely to plaintiffs by the Court of Appeal in *Beaty* is presently pending before this Court in the *Donahue* case, namely, whether the Unruh Civil Rights Act (Unruh Act) prohibits business establishments from discriminating against unmarried couples on the basis of marital status. The only difference between *Donahue* and *Beaty* is that the former involves a housing context while the latter involves insurance discrimination.

I am attorney of record for the real party in interest in the *Donahue* case. As such, I have read the briefs and am familiar with the issues before the Court in *Donahue* for decision. The following citations to the record in *Donahue* demonstrate that whether the Unruh Act prohibits marital status discrimination is an issue before the Court in that case.

On March 10, 1987, the Director of the Department of Fair Employment and Housing charged the Donahues with arbitrary discrimination by a business establishment in violation of the Unruh Act. (Civ. Code § 51). (See *Donahue v. F.E.H.C.* (1991), 2 Cal.Rptr.2d 32, 34.)

Although the term "marital status" is not listed in the Unruh Act, the Fair Employment and Housing Commission (FEHC) concluded that marital status discrimination against cohabiting couples is prohibited by the Act and that the Donahues violated that prohibition when they refused to rent to Verna Terry and Robert Wilder because they were an unmarried couple. (See p. 7 of FEHC decision in *D.F.E.H. v. John Donahue et al.*, Case No. 89-10, dated August 10, 1989.)

In their petition for a writ of mandate in the Superior Court, the Donahues argued that the FEHC erred when "The Commission found Petitioners violated the Unruh Civil Rights Act for refusing to rent to an unmarried couple, even though the

Unruh Act says nothing specifically about unmarried couples." (See *Donahue v. F.E.H.C.*, Joint Appendix in Lieu of Clerk's Transcript, p. 28.)

When the case was pending in the Court of Appeal, the parties briefed the issue of whether or not the Unruh Act prohibited marital status discrimination against unmarried couples. The FEHC argued that marital status discrimination violated the Unruh Act. (See "Appellant's Opening Brief," p. 17.) The Donahues argued that marital status discrimination is not prohibited by the Unruh Act. (See "Respondent's Brief, pp. 11-13.) The FEHC replied that the Donahues had ample notice that marital status discrimination was prohibited by the Unruh Act. (See "Appellant's Reply Brief," p. 4.)

In order to reach the conclusion that a religiously-based constitutional exemption applied to the Unruh Act, the decision of the Court of Appeal assumed, *arguendo*, that the Unruh Act prohibited discrimination against unmarried couples. After noting that "The types of discrimination listed in Civil Code section 51 are illustrative and not exhaustive" (*Donahue*, at fn. 2.), the Court of Appeal declared that "To the extent that Civil Code section 51 applies, the existence of a constitutionally based exemption to Government Code Section 12955 . . . would apply, as well, to section 51." (*Donahue*, at fn. 5.)

The issue of whether or not the Unruh Act prohibits marital status discrimination has been fully briefed in this Court by the by respondent landlords and by respondent real party in interest. (See "Opening Brief on the Merits" of Real Party in Interest," pp. 12-18; and respondent's answer thereto, pp. 7-8.)

This Court may very well reach and decide the statutory interpretation of Unruh in the *Donahue* case.

I declare under penalty of perjury that the foregoing is true and correct. Executed at Los Angeles, California, on July 20, 1992.

Respectfully submitted:



THOMAS F. COLEMAN

DEPARTMENT OF INSURANCE

45 FREMONT STREET, 21ST FLOOR
SAN FRANCISCO, CA 94105



July 23, 1992

The Honorable Chief Justice Lucas
and Associate Justices
California Supreme Court
303 - 2nd Street, South Tower
8th Floor, Room 8023
San Francisco, CA 94107-1317

Re: Beaty v. Truck Insurance Exchange,
Third District Court of Appeal
Case No. C010475, Opinion Filed on May 29, 1992

Request to "Grant and Hold", on the Court's own motion,
Pursuant to Rules 28(a)(1) and 29.2(c)

To The Honorable Malcolm M. Lucas, Chief Justice of California, and
to the Associate Justices of the California Supreme Court:

The Department of Insurance hereby requests that the Court grant
review of the above-entitled case on its own motion under Rules
28(a)(1) and 29.2(c) of the California Rules of Court.

The Beaty case held that the Unruh Civil Rights Act does not
prohibit marital status discrimination against consumers. This is
the first appellate decision to so hold. The Beaty decision
conflicts with opinions of the Attorney General and administrative
decisions of the Fair Employment and Housing Commission. Although
both of these agencies have concluded that Unruh does prohibit
marital status discrimination, the Court of Appeal decided
otherwise, without making any reference to these agency decisions.
The Court of Appeal rendered its decision in a vacuum, without any
input, *amicus curiae* or otherwise, from any governmental agency or
any civil rights organizations.

Donahue v. Fair Employment and Housing Commission, Supreme Court
No. S 024538, is currently pending before this Court and involves
the identical issue addressed in Beaty -- whether marital status
discrimination is prohibited by the Unruh Act -- as well as the
related issue of the scope of the marital status anti-
discrimination provision of Government Code section 12955. (See
former opinion, 2 Cal. Rptr. 2d 32, 34 & n.2, 38 n.5) These cases
involve an important question of law.

The Honorable Chief Justice Lucas
and Associate Justices
California Supreme Court
July 23, 1992
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The Department of Insurance requests that this Court preserve the status quo. Since the business of insurance was expressly made subject to the Unruh Act by the voters by initiative (Insurance Code § 1861.03(a)), the Department of Insurance is concerned that the Beaty case would improperly restrict the scope of Unruh's ban on discrimination.

In the alternative, the Department of Insurance requests that the opinion of the Court of Appeal in Beaty be depublished pursuant to California Rule of Court 979. This alternative is fully discussed in the Department of Insurance's letter dated July 23, 1992 and filed concurrently with this letter brief.

For the foregoing reasons, the Department of Insurance respectfully requests that this Court issue an order on the Court's own motion granting review in Beaty and deferring further action pending the Court's decision in Donahue or, in the alternative, depublishing the Court of Appeal decision in Beaty, which is temporarily published at 6 Cal. App. 4th 1455.

Sincerely,


JANICE E. KERR
General Counsel

COPY

DANIEL E. LUNGREN
Attorney General

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DEPARTMENT OF JUSTICE



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July 22, 1992

Honorable Malcolm M. Lucas
Chief Justice
2California Supreme Court
303 2nd Street, South Tower
San Francisco, CA 94107-1317

RE: Granting review of or depublishing *Beaty v. Truck Insurance Exchange*, No. C010475 (filed May 29, 1992 by Third District Court of Appeal)

Dear Chief Justice Lucas:

I am the attorney of record for the Fair Employment & Housing Commission of the State of California in a case now pending before you, *Donahue v. Fair Employment & Housing Com.*, No. S 024538 (hereafter *Donahue.*) One of the issues in that case^{1/} is whether the Court of Appeal correctly concluded that the Donahues were entitled to a religious exemption from the provisions of Civil Code section 51 (the Unruh Civil Rights Act, which has been held to prohibit arbitrary discrimination by landlords but does not specifically mention marital status as a protected class), as well as from the anti-discrimination provisions of the Fair Employment and Housing Act (FEH Act, which specifically lists marital status as a prohibited category of discrimination.)^{2/} The above issue has been fully briefed by the parties.

1. See p. 12 of the Commission's Petition for Review and p. 6 of Verna Terry's Petition for Review.

2. Specifically the Court noted in a footnote as follows:
"Since the Donahues' conduct in discriminating against an unmarried cohabiting couple is proscribed by Government Code section 12955, we need not address whether the conduct is also proscribed by Civil Code section 51...To the extent that Civil Code section 51 applies, the existence of a constitutionally based exemption to Government Code section 12955...would apply, as well, to section 51." (*Donahue v. Fair Employment & Housing Com.* (1991) 1 Cal. App. 4th 387, 400, n. 5.)

In Donahue, the Commission and the Court of Appeal concluded that the Donahues discriminated against tenants Verna Terry and Robert Wilder because they were not married. Since the Court of Appeal directed the Commission to dismiss the complaint against the Donahues, and since the complaint accused them of both Unruh and FEH Act violations, the issue of whether marital status is a protected class under the Unruh Civil Rights Act will have to be reached by this Court in order to assess the correctness of the Commission's decision (See Donahue v. Fair Employment & Housing Com., supra, 1 Cal. App. 4th 387, 394, 411.)

It has just come to the Commission's attention that no Petition for Review was ever filed in the case of Beaty v. Truck Insurance Exchange, No. C010475 (hereafter Beaty), and that the time for so doing has lapsed. In that case the Third District Court of Appeal erroneously concluded that the Unruh Act does not cover marital status discrimination (Id., pp. 7256-7258 of the Daily Appellate Report.) This result is in direct conflict with the interpretation the Commission gave to the Unruh Act in the Donahue case, where it concluded that marital status discrimination was prohibited by the Unruh Act (see p. 7 of the Commission's decision in D.F.E.H. v. John Donahue, et al., Case No. 89-10, dated August 10, 1989.)

On behalf of the Commission, it is respectfully requested that, on or before July 28, 1992, the Court issue an order pursuant to Rule 28 (a)(1) of the California Rules of Court extending time to consider more fully whether to grant a sua sponte review of the Beaty case, and that, after due consideration, it grant review and defer briefing in that case pending the Court's decision in Donahue. In the alternative, it is respectfully requested that the Court order the Beaty decision depublished pursuant to Rule 978 of the California Rules of Court, thereby reserving resolution of the Unruh Act issue for the Donahue case.

If review is not granted in Beaty or if the opinion is not depublished, this erroneous decision, which is in conflict with the Commission's Donahue decision and which was arrived at without briefing by the Commission or other interested parties,

Chief Justice Malcolm Lucas
July 22, 1992
Page 3

will be binding on trial courts and on the Commission until this Court has an opportunity to decide in Donahue whether the Unruh Act covers marital status discrimination.

Sincerely,

DANIEL E. LUNGREN
Attorney General



KATHLEEN W. MIKKELSON
Deputy Attorney General

cc: Maureen Sheehy
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FOUNDATION OF
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July 22, 1992

California Supreme Court
303 Second Street
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Room 6023
San Francisco, Ca. 94107-1317

Re: Beaty v. Truck Insurance Exchange
Court of Appeal, Third District
No. C010475
Opinion Filed May 29, 1992

To the Honorable Justices of the California Supreme Court:

The American Civil Liberties Union of Northern California, the American Civil Liberties Union of Southern California, and the American Civil Liberties Union of San Diego and Imperial Counties (the three California affiliates of the ACLU) write to support the request of the plaintiff in this case that this court either order the Court of Appeal opinion depublished or review the decision of the Court of Appeal on its own motion.

Beaty v. Truck Insurance Exchange is the first case since this court's decision in Harris v. Capital Growth Investors (1991) 52 Cal.3d 1142 to decide if a class not enumerated in the Unruh Act is nonetheless covered by it. The Beaty decision fails to use the analysis for this important question set out in Harris, and actually relies on two arguments which this court disapproved in Harris. Since Beaty departs so significantly from this court's careful Harris opinion, and since it is the first case to consider this important issue in the wake of Harris, this court should either depublish it or grant review on its own motion.

The Beaty court concluded that the Unruh Act does not apply to marital status discrimination because, in its view, the state's policy of promoting marriage would be best served by having the legislature explicitly decide whether to include it. 92 Daily Journal DAR at 7256.

But in Harris, this court held that the critical inquiry was not whether the courts believe public policy is best advanced by including a class within the Act, but rather whether the characteristic which defines the class is a "personal" characteristic such as "geographical origin, physical attributes and personal beliefs." Harmonizing the Legislature's enumeration of certain characteristics with this court's decisions in In Re Cox 3 Cal.3d 205 and its progeny, this court held that the Unruh Act covers the enumerated categories and classes defined by "similar personal traits, beliefs or characteristics." 52 Cal.3d at 1169.

The court in Beaty never addressed the critical question of whether marital status is a personal trait like those explicitly covered by the act. Moreover, after stating its view on the wisdom of including marital status as a matter of policy, the court said its decision was supported by the fact that the legislature has banned marital status discrimination in many statutes, but had not done so explicitly in the Unruh Act. 92 Daily Journal DAR at 7256. But in Harris, this court suggested that a large body of law explicitly protecting the class would be a factor indicating that the class should be included with other protected classes in Unruh. 52 Cal.3d at 1161, n. 9.

Finally, as an alternative basis for its holding, the Beaty court offered the second sentence of section 51, which says the section does not "...confer any right or privilege on a person which is conditioned or limited by law or which is applicable alike to persons of every sex, color, race religion, ancestry, national origin or blindness or other physical disability." In Harris this court said this sentence meant that Unruh does not create rights if other legislation specifically disclaims them, and that it does not create rights if the same rights are already extended by law to all persons regardless of sex, color, race or the other categories enumerated in Unruh. 52 Cal.3d at 1155. The Beaty court never even suggested that any state law disclaims the right to be free from discrimination based on marital status in insurance or that any other law prohibits discrimination in insurance against all persons without regard to all of the Unruh categories.¹ Instead, the court seemed to hold that this sentence limits the Unruh Act to the enumerated categories. 92 Daily Journal DAR at 7256. This court specifically rejected that argument in Harris. 52 Cal.3d at 1155.

¹ Any such holding would appear to be insupportable. Compare Civ. C. §51 with Ins. C. §679.71.

California Supreme Court Justices
July 22, 1992

Page 3

The ACLU affiliates believe that the Beaty court reached the wrong result, and that had it applied the Harris analysis, it would have concluded that marital status discrimination is prohibited by the Unruh Act. See, Harris v. Capital Growth Investors (1991) 52 Cal.3d 1142, 1159-1161; cf., Stoumen v. Reilly (1951) 37 Cal.2d 713; Marina Point Ltd. v. Wolfson (1982) 30 Cal.3d 721. Were the Beaty opinion a single exception to a body of cases applying the Harris analysis to the important issue of coverage under the Unruh Act, its failure to follow this court's decision in Harris might be less critical. But as the first post Harris case to address the question, it has the potential to confuse the careful Harris opinion. This court should not let it stand as is.

Sincerely yours,

MATTHEW A. COLES
American Civil Liberties Union of
Northern California

PAUL HOFFMAN
American Civil Liberties Union of
Southern California

BETTY WHEELER
American Civil Liberties Union of
San Diego and Imperial Counties

By 

Matthew A. Coles

MAC:fmb
\LETTERS\Beat0722

cc: Maureen Sheehy, Esq.
Craig H. Bell, Esq.
Clerk, California Court of Appeal
Third District



JAMES K. HAHN
CITY ATTORNEY

Post-It™ brand fax transmittal memo 7671		# of pages • 2
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Co.	Co. City Atty	
Dept.	Phone 213 485-7471	
Fax # 213 258-8099	Fax # 213 485-8898	

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July 20, 1992

VIA FEDERAL EXPRESS

Chief Justice Malcolm M. Lucas
 and Members of the Court
 California Supreme Court
 303 Second Street
 South Tower, Eighth Floor
 San Francisco, California 94107-1317

Re: Beaty v. Truck Insurance Exchange,
 Third District Court of Appeal No. C010475,
 Opinion file May 29, 1992

Re: Request to Grant Review or to Depublish Decision

To the Court:

This letter is written to request that the Court grant review of the above-entitled matter on its own motion. Rule 28(a)(1) of the California Rules of Court. In the alternative, we urge the decision be depublished.

The Beaty case holds that the Unruh Civil Rights Act does not prohibit marital status discrimination against consumers. This Office recently filed an amicus curiae brief in the case of Delaney v. Superior Fast Freight, Case No. 2 Civ. B063458. In that case, the superior court invalidated a Los Angeles ordinance barring employment discrimination on the basis of sexual orientation upon grounds such ordinances were preempted by the Fair Employment and Housing Act.

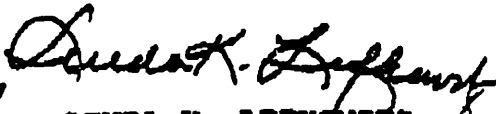
Our research in that brief revealed substantial confusion regarding the extent to which various state laws encompass certain classes of discrimination. Accordingly, we urge this Court accept review of the Beaty case to begin to resolve the conflicts and confusion which currently face both

Chief Justice Malcolm W. Lucas
and Members of the Court
Re: Beaty v. Truck Ins. Exchange
July 20, 1992
Page 2

citizens, legislators, and practitioners in the field of
employment law. Alternatively, please consider this a request to
order the Beaty decision depublished. Cal. Rules of Court,
Rule 978.

Very truly yours,

JAMES K. HAHN, City Attorney

By 
LINDA K. LEFKOWITZ
Assistant City Attorney

LKL:sjs
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Feldman, Waldman & Kline
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Mr. Craig H. Bell
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Third District
Library and Courts Bldg., Rm. 119
Sacramento, CA 95814

Honorable Joe S. Gray
720 9th Street
Sacramento, CA 95814

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CHIEF DEPUTY CITY ATTORNEYS

July 20, 1992

The Honorable Chief Justice Lucas
and Associate Justices
California Supreme Court
303 Second Street, South Tower
8th Floor, Room 8023
San Francisco, CA 94107-1317

To the Honorable Malcolm M. Lucas, Chief Justice of California,
and to the Associate Justices of the California Supreme Court:

Beaty v. Truck Insurance Exchange
Case No. C010475

We are writing to request that the Court grant review of the above-entitled case on its own motion under Rule 28(a)(1) of the California Rules of Court. Alternatively, we request the Court to depublish the decision under Rule 978 of the California Rules of Court.

The opinion in Beaty was final as to the Court of Appeal on June 28, 1992. Therefore, in order for the Court to preserve its jurisdiction to grant review on its own motion, we respectfully urge that on or before July 28, the Court issue an order extending time for it to consider more fully whether to grant review.

The Beaty case held that the Unruh Civil Rights Act does not prohibit marital status discrimination against consumers. This is the first appellate decision to so hold. The decision conflicts with opinions of the Attorney General and administrative decisions of the Fair Employment and Housing Commission. The Fair Employment and Housing Commission adjudicates cases of employment, housing and public accommodations discrimination and thus plays a significant role in the administrative enforcement of the Unruh Act and the Fair Employment and Housing Act (Government Code section 12935, subdivision (b).) Although both of these agencies have concluded that Unruh does prohibit marital status discrimination, the Court of Appeal decided otherwise, without even mentioning these agency decisions. The Court of Appeal rendered its decision in a

The Honorable Chief Justice Lucas
and Associate Justices -2-

July 20, 1992

vacuum, absent any input, amicus curiae or otherwise, from any government agency or any civil rights organizations.

The identical issue -- whether marital status discrimination is prohibited by the Unruh Act -- is pending in this Court in Donahue v. Fair Employment and Housing Commission, Supreme Court No. S 024538. The issue was fully briefed by Verna Terry, Real Party in Interest in Donahue. (See Opening Brief on the Merits of Real Party in Interest, pages 12-18.) The issue of marital status was also addressed by the City of San Diego in its amicus letter dated May 19, 1992.

The Beaty case involves an important question of law. In as much as this same issue is pending before this Court in Donahue, The City of San Diego urges this Court to maintain the status quo regarding marital status discrimination protection under Unruh at least until it issues its decision in Donahue. This Court may do so by: (1) issuing an order prior to July 28 extending to consider a sua sponte grant of review in Beaty; (2) give full consideration to a grant of review of the Court's own motion; and (3) grant review and defer briefing in the case pending the Court's decision in Donahue.

Alternatively, The City of San Diego asks this Court to order the Beaty decision depublished pursuant to Rule 978 of the California Rules of Court. The opinion should be depublished because it ignores administrative precedent, including two attorney general opinions (58 Op. Att'y Gen. 608, 613 (1975) and 59 Op. Att'y Gen. 223, 224 (1976)), and a decision of this Court which cited the 1975 Attorney General opinion with approval (Marina Point Ltd. v. Wolfson, 30 Cal. 3d 721, 736 (1982).) The Court of Appeal opinion also ignored the decision of the Fair Employment and Housing Commission in the Donahue case in which the Commission ruled that the Unruh Act prohibits marital status discrimination.

Sincerely yours,

JOHN W. WITT, City Attorney

By

Sharon A. Marshall
Sharon A. Marshall
Deputy City Attorney

SAM:mrh:571.1



CITY OF
SANTA MONICA
CALIFORNIA

OFFICE OF THE CITY ATTORNEY

WRITER'S DIRECT DIAL NUMBER

(310) 438-

8336

July 20, 1992

California Supreme Court
303 2nd Street, South Tower
San Francisco, California 94107-1317

Re: Beaty v. Truck Insurance Exchange
3rd Dist Ct of Appeal Case No. C010475
Opinion Filed May 29, 1992

Request of Appellants for Order Extending Time Prior
to Jurisdictional Deadline of July 28, 1992

Attention: Chief Justice Malcolm M. Lucas

TO THE COURT:

The City of Santa Monica supports the request of appellants in Beaty v. Truck Insurance Exchange for an order granting review under Rule 28(a)(1) of the California Rules of Court or alternatively, for an order depublishing the decision under Rule 978 of the California Rules of Court, since the issue of whether marital status discrimination is prohibited by the Unruh Act is pending before this Court in the Donahue v. Fair Employment and Housing Commission case, Supreme Court No. S 024 538.

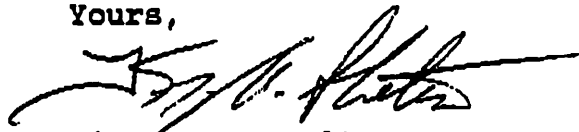
The Plaintiffs in the Donahue case are similarly situated to the plaintiffs in the Beaty case in that the overriding basis for discrimination in both cases is marital status. The issues of equality in consumer services for unmarried couples is extremely important in a state as diverse as California. The holding in the Beaty case is far reaching in its possible effects on other consumer services. The issue of whether the Unruh Civil Rights Act (Civil Code Section 51 et seq.) prohibits discrimination on the basis of marital status is of such importance that the intervention of the Supreme Court is necessary to protect the rights of the vast number of individuals

California Supreme Court
July 20, 1992
Page 2

who may be adversely affected by the holding of the Court of Appeal.

In light of the extensive briefing of the issue of marital status discrimination in the Donahue case and the possible impact the Beaty decision, we strongly urge the Court to grant the Appellants' request to grant review of the decision or in the alternative to depublish it.

Yours,



Kimery A. Shelton
Deputy City Attorney
Consumer Protection/Fair
Housing & Civil Rights Unit

BAY AREA LAWYERS FOR INDIVIDUAL FREEDOM

P.O. Box 421983

San Francisco, CA 94142-1983

(415) 956-5764

July 23, 1992

California Supreme Court
303 Second Street, South Tower
San Francisco, California 94107-1317

Attention: Chief Justice Malcolm M. Lucas

RE: Beaty v. Truck Insurance Exchange, Third District Court of
Appeal Case No. C010475, Opinion Filed May 29, 1992

To The Honorable Justices of the California Supreme Court:

Bay Area Lawyers For Individual Freedom ("BALIF") writes in support of the petition for review in the above-entitled case. In the alternative, BALIF supports depublication of the decision.

BALIF is an organization of more than four hundred lawyers, legal workers and law students in the San Francisco Bay Area. It was founded in 1980 to protect and further the legal and professional interests of lesbians and gay men and, more broadly, to seek justice for sexual minorities under the law. BALIF has filed numerous amicus curiae briefs in important state and federal gay and lesbian rights cases, most recently in Donahue v. Fair Employment and Housing Commission, California Supreme Court No. S 024538.

BALIF requests that the Court grant review of the above-entitled case on its own motion pursuant to Rule 28(a)(1) of the California Rules of Court. The opinion in Beaty was final as to the Court of Appeal on June 28, 1992. We therefore respectfully request that the Court issue an order extending time for consideration of whether to grant review, thus preserving the Court's jurisdiction to grant review on its own motion.

The Court of Appeal in Beaty held that the Unruh Civil Rights Act does not prohibit discrimination based on marital status. While the holding in Beaty conflicts with two opinions of the Attorney General (58 Ops.Cal.Atty. Gen. 608, 613 (1975); 59 Ops.Cal.Atty.Gen. 223, 224 (1976)), the Court of Appeal nowhere addressed these opinions. Moreover, the Court of Appeal nowhere acknowledged that its ruling was contrary to the decision reached by the Fair Employment and Housing Commission ("FEHC") in Donahue v. Fair Employment and Housing Commission, supra.

BALIF is a Bar Association of over 400 lesbian and gay members of the legal community.

The Beaty case involves an important question of law. How that issue is resolved will directly affect the civil rights of the many heterosexual and gay and lesbian unmarried couples of the state of California. The question of whether marital status discrimination is prohibited by the Unruh Civil Rights Act is currently before the Court in Donahue, supra. In contrast to the Beaty decision, which was reached without the benefit of any amicus briefing or administrative agency determination, in Donahue the issue has been fully briefed both by Verna Terry, Real Party in Interest, and numerous amici, and the FEHC has ruled on the matter.

In light of the above, BALIF requests that the Court: (1) issue an order prior to July 28, 1992 extending time to consider a sua sponte grant of review in Beaty; (2) give full consideration to a grant of review on the Court's own motion; and (3) grant review and defer briefing in the case pending the Court's decision in Donahue.

In the alternative, BALIF requests that the Court order Beaty depublished pursuant to Rule 978 of the California Rules of Court. The opinion should be depublished because it ignores the administrative precedents cited above.

Thank you for your attention to this matter.

Very truly yours,



Michael Adams
Bay Area Lawyers For Individual Freedom

PROOF OF SERVICE

I, Michael Adams, declare that I am a citizen of the United States, employed in the City and County of San Francisco; I am over the age of 18 years and not a party to the within action or cause; my business address is 1663 Mission Street, Suite 400, San Francisco, California, 94103.

On July 23, 1992, I caused to be served by mail a copy of a letter to the California Supreme Court dated July 23, 1992, by placing a true copy thereof enclosed in a sealed envelope, with appropriate postage, and placed in the U.S. Mail addressed as follows:

Maureen Sheehy, Esq.
Feldman, Waldman & Kline
235 Montgomery St., 27th
Flr.
San Francisco, CA 94104

Craig H. Bell, Esq.
Waldman, Graham & Chuang
12121 Wilshire, #401
Los Angeles, CA 90025

Tom Coleman, Esq.
P.O. Box 65756
Los Angeles, CA 90065

Honorable Joe Grey
720 9th Street
Sacramento, CA 95814

Clerk
California Court of Appeal
Third District
914 Capitol Mall, Rm. 100
Sacramento, CA 95814

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 23, 1992 at San Francisco, California.



Michael Adams

The Law Offices of
GOLDFARB & LIPMAN

One Montgomery Street
Telesis Tower
Twenty-Third Floor
San Francisco
California 94104

July 23, 1992

Steven H. Goldfarb
Barry R. Lipman
M David Kroot
Lee C. Rosenthal
Roger A. Clay, Jr.

Honorable Chief Justice Malcolm M. Lucas
Honorable Justice Stanley Mosk
Honorable Justice Edward Panelli
Honorable Justice Joyce L. Kennard
Honorable Justice Armand Arabian
Honorable Justice Marvin Baxter
Honorable Justice Ronald Marc George

Paula S. Crow
John T. Nagle
Polly V. Marshall

California Supreme Court
303 Second Street, South Tower
San Francisco, California 94107-1317

Natalie L. Gubb
Lynn Hutchins
Richard A. Judd
Peter Franklin
Scott R. Barshay
James D. Smith

Re: **Request for Order Extending Time in
Which to Grant Review, Order Granting
Review, or Order Granting Request for
Depublication in Beaty v. Truck
Insurance Exchange, (Case No. C010475,
3rd District Court of Appeal, Opinion
filed May 29, 1992); **Supreme Court Case
No. S-027760****

Karen M. Tiedemann
Thomas H. Webber
Michael I. Berry
Dianne Jackson McLean
Raymond P. Bolanos
Irene M. Shin
R. Renée Glover
Andrew Z. Shagrin

To the Justices of the California Supreme Court:

On behalf of Midpeninsula Citizens for Fair Housing, a California nonprofit public benefit corporation, we write to request that the Supreme Court: (1) order an extension of time in which to determine whether to grant review of the decision of the Third District Court of Appeal in Beaty v. Truck Insurance Exchange, Case No. C010475, published in the advance sheet at 6 Cal.App.4th 1455 (copy attached); and (2) on its own motion, grant review of that decision pursuant to Rule 28(a)(1) of the California Rules of Court. Alternatively, we request that the Court depublish the decision under Rule 978 of the California Rules of Court.

In affirming the grant of a demurrer without leave to amend, the Beaty court determined that the Unruh Civil Rights Act (Civil Code Section 51 et seq.) does not prohibit marital status discrimination. Beaty, 6 Cal.App.4th at 1463. The Beaty court decided this very important question of civil rights law without the participation by any affected government agency, any civil rights organization, or other amicus. In its opinion, the Beaty court failed to cite or distinguish relevant precedents.

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213 627-6336

INHSE177.P50

We became aware of the Beaty decision a few days ago. We are informed that the Beaty plaintiffs have retained new counsel and have requested that the Supreme Court take the same actions requested in this letter.

Nature of Requesting Entity

MCFH is a private nonprofit membership organization, located in Palo Alto, California, which provides investigation, counseling and education concerning housing discrimination in more than a dozen San Francisco Bay Area cities. MCFH has been actively engaged in fair housing for over twenty-five years. MCFH's interests are directly affected by the Beaty decision because the Unruh Civil Rights Act is one of the civil rights laws applicable to housing which MCFH seeks to enforce. MCFH has a vital interest in the interpretation of discrimination laws applicable to housing.

The Beaty Opinion and the Donahue Case

The Beaty opinion is the first appellate decision which expressly holds that the Unruh Act does not prohibit marital status discrimination. The decision fails to mention or distinguish contrary authority and purports to determine an issue now before the Supreme Court in Donahue v. Fair Employment and Housing Commission, Case No. S 024538. (See Donahue v. Fair Employment and Housing Commission, (1991) 1 Cal.App.4th 387, 394, fn.2 and at 400, fn.5, rev. granted.)

The Fair Employment and Housing commission (FEHC) concluded in Donahue, inter alia, that marital status discrimination is prohibited by the Unruh Act and the Fair Employment and Housing Act (Government Code Section 12900 et seq.) (the "FEHA"), and found that the Donahues had discriminated on the basis of marital status against an unmarried couple, Verna Terry and Robert Wilder. (See D.F.E.H. v. John Donahue et al., Case No. 89-10, August 10, 1989, at 7.) The Court of Appeal determined that the Free Exercise Clause of the California Constitution exempted the Donahues from the enforcement of the marital status discrimination prohibition under the FEHA. (Donahue, 1 Cal.App.4th at 410.)

In order to reach its conclusion that the constitutional exemption required dismissal of the FEHC enforcement action, the Court of Appeal's decision in Donahue assumed, arguendo, that the Unruh Act prohibited marital status discrimination. The Court of Appeal declared that "[t]o the extent that Civil Code section 51 applies,

the existence of a constitutionally based exemption to [the prohibition against marital status discrimination under] Government Code Section 12955 . . . would apply, as well, to section 51." (Donahue, 1 Cal.App.4th at 400, fn. 5.)

The question whether the Unruh Act prohibits marital status discrimination has been fully briefed in the Supreme Court. (See "Opening Brief on the Merits of Real Party in Interest," pp. 12-18; and respondent's answer thereto, pp. 7-8.) The Supreme Court may reach and decide the Unruh Act question in Donahue.¹

The Beaty Opinion and Relevant Precedent

The Beaty opinion does not even mention opinions of the California Attorney General and the administrative decision of the California Fair Employment and Housing Commission in Donahue, which hold that the Unruh Act does prohibit marital status discrimination. (See (1) the Opinions of the California Attorney General at 58 Ops.Cal.Atty.Gen. 608, 613 (1975), cited with approval in Marina Point Ltd. v. Wolfson (1982) 30 Cal.3d 721, 736, at 59 Ops.Cal.Atty.Gen. 223, 224 (1976), and (2) the decision of the FEHC at D.F.E.H. v. John Donahue et al., Case No. 89-10, August 10, 1989, at 7). In addition to the failure to deal with this prior authority, we believe that the Beaty opinion erroneously applies the decision of the Supreme Court in Harris v. Capital Growth Investors XIV (1991) 52 Cal.3d 1142. Under Harris, the Unruh Act prohibits arbitrary discrimination on the basis of personal characteristics, as distinguished from "economic" criteria. Harris, 52 Cal.3d at 1169. Marital status is properly characterized as a "personal characteristic" within the meaning of the Unruh Act.

Request for Grant of Review

The Beaty decision became final as to the Court of Appeal on June 28, 1992. If the Supreme Court does not act with regard to the Beaty Decision by July 28, the decision will become final in its current status as a published decision. For the reasons stated above, we urge the Supreme Court to maintain the status quo of civil rights

¹ If the Supreme Court concludes that the Donahues are not entitled to a religious exemption from the marital status discrimination prohibition, the judgment of the Court of Appeal would be reversed unless this Court were to decide that neither statute prohibits discrimination against unmarried couples.

enforcement of marital status protection under the Unruh Act at least until the Supreme Court issues its decision in Donahue. We request that the Court: (1) issue an order prior to July 28 extending time to consider a sua sponte grant of review in Beaty, (2) give full consideration to a grant of review of the Court's own motion, and (3) grant review and defer briefing in Beaty pending the Court's decision in Donahue. The Supreme Court has the authority to take all these actions pursuant to California Rules of Court Rule 28(a)(1).

The court should grant review of the Beaty decision in order to secure uniformity of decision with prior precedent and the Donahue case, and to settle an important question of law regarding the scope of the Unruh Act's anti-discrimination protection. See California Rules of Court Rule 29(a).

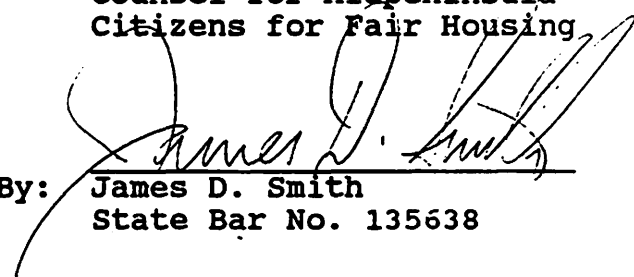
Alternative Request for Depublication

Alternatively, MCFH requests the Supreme Court to order the Beaty decision depublished pursuant to Rule 978 of the California Rules of Court. The opinion should be depublished because it fails to mention and distinguish relevant contrary precedents, and because it erroneously applies the applicable standard for determining whether discrimination on the basis of a personal characteristic is prohibited by the Unruh Act.

Thank you for your consideration of this request.

Sincerely,

GOLDFARB & LIPMAN
Counsel for Midpeninsula
Citizens for Fair Housing


By: James D. Smith
State Bar No. 135638

July 21, 1992



Honorable Chief Justice Malcolm M. Lucas, and
Honorable Associate Justices
Supreme Court of the State of California
303 2nd Street, South Tower, 8th Floor
San Francisco, CA 94107-1317

RE: Beaty v. Truck Insurance Exchange, Third District Court of
Appeal, Case No. C010475

TO THE CHIEF JUSTICE AND ASSOCIATE JUSTICES:

The Fair Housing Council of Orange County respectfully requests the Court to grant review of the above entitled action on its own motion pursuant to Rule 28(a)(1) of the California Rules of Court.

Beaty v. Truck Insurance Exchange is the first appellate decision to hold that the Unruh Civil Rights Act does not prohibit marital status discrimination against consumers. In so holding, the Third District ignored contrary precedents set by both the Fair Employment and Housing Commission and the Office of the Attorney General, including the opinions of 58 Ops.Cal.Atty.Gen. 608 (1975) and 59 Ops.Cal.Atty.Gen. 223 (1976); moreover, the Court of Appeals failed to acknowledge a decision of this Court which cited the former Attorney General opinion with approval (Marina Point Ltd. v. Wolfson (1982) 30 Cal.3d 721, 736). Finally, this precise issue is currently pending in this Court in Donahue v. Fair Employment and Housing Commission, Supreme Court No. S024538.

The Beaty decision was filed on May 29, 1992, and was final as to the Court of Appeal on June 28, 1992. So that this Court may maintain jurisdiction to grant review on its own motion, we would ask that it issue an order, on or before July 28, 1992, extending the time for considering a sua sponte review. Should the Court issue such an order, and after fully considering this question, it is our sincere hope that the Court will in fact grant review of the subject case and defer further briefing pending the forthcoming decision in Donahue. This would insure, at least until the Donahue opinion is rendered, that the current protections afforded under the Unruh Act will continue intact and undiminished.

FAIR HOUSING COUNCIL of ORANGE COUNTY
1222 N. BROADWAY, SANTA ANA, CALIFORNIA 92701 ☐ (714) 569-0823

"A HUD Certified
Counseling Agency"

"Serving Orange County Since 1965"



In the alternative, and for the reasons previously cited, we would respectfully request that the Court order the Beaty decision depublished pursuant to Rule 978 of the California Rules of Court. If permitted to stand, this decision will inevitably have far-reaching and devastating effects on the livelihood of many of our state's residents.

Sincerely,

A handwritten signature in cursive script that reads "Rob B. Rank". The signature is written in dark ink and is positioned to the right of the typed name.

Rob B. Rank
Fair Housing Council of Orange County

✓

LAW OFFICES OF
GREENBERG, GLUSKER, FIELDS, CLAMAN & MACHTINGER

ARTHUR N. GREENBERG
PHILIP GLUSKER
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ELIZABETH M. PRIESTLEY
ELIZABETH M. PUGH
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STEVEN H. FEDER
LORI A. LOO
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OUR FILE NUMBER:

99901-001.45

July 17, 1992

VIA FEDERAL EXPRESS

Hon. Malcolm M. Lucas, Chief Justice, and
the Associate Justices of the Supreme Court
303 2nd Street, South Tower
San Francisco, CA 94107-1317

Re: Beaty v. Truck Insurance Exchange,
Third District Court of Appeal
No. C010475, Opinion Filed May 29, 1992

Dear Chief Justice and Associate Justices:

Greenberg, Glusker, Fields, Claman & Machtinger serves as general counsel to Westside Fair Housing Council ("WFHC"), a nonprofit corporation organized to assist victims of illegal housing discrimination in West Los Angeles and neighboring communities. We write to request that the Court grant review of the Beaty case on its own motion under Rule 28(a)(1) of the California Rules of Court. Alternatively, we asked the Court to order that the opinion be depublished under Rule 979 of the California Rules of Court.

Organized in 1968, WFHC is a community-based organization funded by government grants and private donations. Operating under contracts with the City of Los Angeles and other Southern California municipalities, WFHC works to eliminate unfair housing practices and assists homeseekers and renters who have been unfairly denied housing opportunities. In this role, WFHC conducts independent investigations to uncover evidence of illegal discrimination, supports litigation on behalf of victims of illegal discrimination, and occasionally joins as a plaintiff in litigation against landlords who violate fair housing laws and the Unruh Civil Rights Act.

The opinion in Beaty became final as to the Court of Appeal on June 28, 1992. Therefore, in order for the Court to preserve

Hon. Malcolm M. Lucas, Chief Justice, and
the Associate Justices of the Supreme Court
July 17, 1992
Page 2

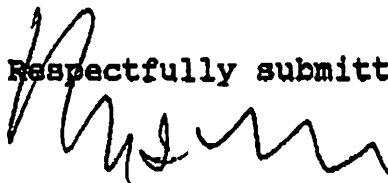
its jurisdiction to grant review on its own motion, we respectfully urge that on or before July 28, 1992, the Court issue an order extending time for it to consider more fully whether to grant review.

Among other things, the Court of Appeal held in Beaty that the Unruh Civil Rights Act does not prohibit discrimination against consumers based on their marital status. This very issue is pending in this Court in Donahue v. Fair Employment and Housing Commission, Supr. Ct. No. 8 024538. The issue was fully briefed by Real Party in Interest Verna Terry in the Donahue case.

Both the Fair Employment and Housing Commission and the Attorney General have concluded that the Unruh Civil Rights Act prohibits marital status discrimination. The Court of Appeal in Beaty decided otherwise without reviewing any decision of the FEHC or any opinion of the Attorney General. (See 58 Ops.Cal.Atty.Gen. 608, 613 (1975); 59 Ops.Cal.Atty.Gen. 223,224 (1976).)

Westside Fair Housing Council respectfully requests that the Court maintain the status quo ante of civil rights enforcement pending its decision in Donahue. Alternatively, Westside Fair Housing Council requests that the Court order that the Beaty opinion be depublished pursuant to Rule 979 of the California Rules of Court.

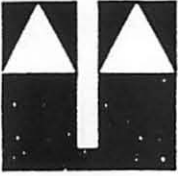
Respectfully submitted,



Roger L. Funk

RLF/sw

cc: Attached Proof of Service



Lambda Legal Defense and Education Fund, Inc.

666 Broadway, New York, NY 10012 (212) 995-8585 FAX (212) 995-2306
606 S. Olive St., Suite 580, Los Angeles, CA 90014 (213) 629-2728 FAX (213) 629-9022

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July 23, 1992

California Supreme Court
303 - 2nd Street/So. Tower
San Francisco, CA 94107-1317

Re: Beaty v. Truck Insurance Exchange
Court of Appeal No. C 010475
Published at 6 Cal.App.4th 1455

Action Required by July 28, 1992

Dear Members of the Court:

Lambda Legal Defense and Education Fund, Inc. and Lawyers for Human Rights filed a brief amicus curiae with this Court on May 15, 1992, in the case currently pending before the Court entitled Donahue v. Fair Employment and Housing Commission, S 024538. We now join in the request of Appellants Boyce Hinman and Larry Beaty that the Court "grant and hold" review of the above-referenced case, Beaty v. Truck Insurance Exchange, pending disposition of Donahue.

As pointed out by Appellants Hinman and Beaty, the deadline for filing a petition for review in this case expired on July 8, 1992. Counsel for amici did not learn that Appellants' counsel before the court of appeal had failed to file a petition for review until after July 8. Because of the similarity of issues resolved in Beaty to those raised before this Court in Donahue, amici believe that the interests of fairness and judicial consistency will best be served through the Court's exercise of its power sua sponte to "grant and hold" review of the Beaty case, pending disposition of Donahue. Alternatively, amici urge this Court to depublish the Beaty decision as inconsistent with existing caselaw.

The Beaty decision addressed the issue of whether, in the context of insurance, the Unruh Civil Rights, Civil Code Section 51 et seq., prohibits business establishments from discriminating against unmarried couples on the basis of their marital status. This issue already lies before this Court in Donahue. Not only does this issue affect the constituents represented by amici,

Los Angeles Office

Through test-case litigation and public education, Lambda works nationally to defend and extend the rights of lesbians, gay men, and people with HIV. Lambda is a non-profit, tax-exempt organization founded in 1973.

99

this issue similarly affects all persons, married or unmarried, who may face differential treatment based on their marital status. The decision in Beaty that such discrimination is not barred by the Unruh Act is inconsistent with existing precedent. The Beaty decision does not address two conflicting opinions from the Office of the Attorney General: 1) 58 Ops.Cal.Atty. Gen. 608, 613 (1975) (cited with approval in Marina Point Ltd. v. Wolfson (1982) 30 Cal.3d 721, 736); and 2) 59 Ops.Cal.Atty.Gen. 223, 224 (1976). The decision also conflicts with the decision of the Fair Employment and Housing Commission and the Court of Appeal in the Donahue case.

A "grant and hold" is appropriate in instances such as this to preserve the status quo and to prevent a miscarriage of justice. If the Beaty decision is allowed to stand unreviewed, numerous agencies will be hampered in their interpretation and enforcement of the Unruh Act. The Beaty court did not have the benefit of the participation of these agencies and the numerous amici who have provided this Court with additional insight into the ramifications of such a holding. Thus, the decision should be held pending disposition of Donahue.

For the foregoing reasons, we respectfully urge the Court to issue an order on the Court's own motion to grant review in Beaty and defer further action pending the Court's decision in Donahue, or, alternatively, to depublish the Beaty decision.

Respectfully submitted,



Mary Newcombe
Counsel for Amici Curiae
Lambda Legal Defense and
Education Fund, Inc. and
Lawyers for Human Rights

cc: Attached Proof of Service

No. 3rd C010475 - S027760

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

LARRY BEATTY et al.

v.


TRUCK INSURANCE EXCHANGE

The time for granting or denying review on the court's own motion is hereby extended to and including August 27, 1992, or the date upon which review is either granted or denied. Rule 28(a)(1) California Rules of Court.

SUPREME COURT
FILED

JUL 24 1992

Robert Wandell Clerk
P. QUINN
DEPUTY



Acting Chief Justice

Third Appellate District No. C010475
S027760

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

LARRY BEATY Et Al., Appellants

v.

TRUCK INSURANCE EXCHANGE, Respondent

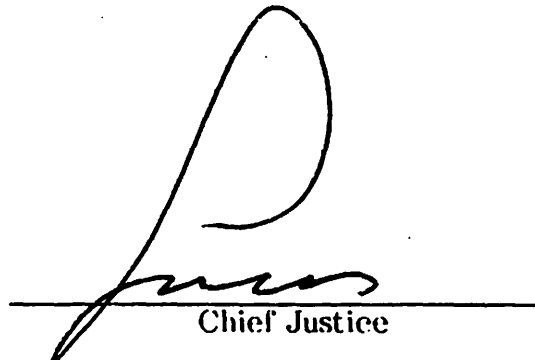
SUPREME COURT
FILED

AUG 27 1992

Robert Wandruff Clerk

DEPUTY

The requests to grant review on the court's own motion are denied.
The requests for an order directing depublication of the opinion
are denied.



Chief Justice

Display 1991-1992 Bill Text - INFORMATION
BILL NUMBER: SB 1923

BILL TEXT

INTRODUCED BY Senator Marks

FEBRUARY 21, 1992

An act to amend Section 790.03 of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 1923, as introduced, Marks. Insurance: unfair practices.

Existing law prohibits life or disability insurers from engaging in certain discriminatory practices, as specified, on the basis of race, color, religion, national origin, ancestry, or sexual orientation.

Existing law also defines and provides remedies for various unfair practices in the business of insurance. One of these categories of unfair practices is the making or permitting of unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in other benefits payable or in any other of the terms and conditions of the contract.

This bill would revise that unfair practice provision to specifically include, as an unfair practice, discrimination based on an individual's race, religion, national origin, marital status, or sexual orientation in the rates charged for any contract of insurance or in other benefits payable or in any other of the terms and conditions of the contract.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.



PROPOSED AS AMENDED
July 1, 1992

Introduced by Senator Marks

February 1, 1992



*An act to amend Section 790.03 of the Insurance Code, relating to insurance.
SB 1923, as introduced, Marks. Insurance: unfair practices.*

The people of the State of California do enact as follows:

SECTION 1. Section 790.03 of the Insurance Code is amended to read:

790.03. The following are hereby defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance.

(a) Making, issuing, circulating, or causing to be made, issued or circulated, any estimate, illustration, circular or statement misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon, or making any false or misleading statement as to the dividends or share of surplus previously paid on similar policies, or making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates, or using any name or title of any policy or class of policies misrepresenting the true nature thereof, or making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit, or surrender his or her insurance.

(b) Making or disseminating or causing to be made or disseminated before the public in this state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatsoever, any statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any person in the conduct of his or her insurance business, which is untrue, deceptive, or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue, deceptive, or misleading.

(c) Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance.

(d) Filing with any supervisory or other public official, or making, publishing, disseminating, circulating, or delivering to any person, or placing before the public, or causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public any false statement of financial condition of an insurer with intent to deceive.

(e) Making any false entry in any book, report, or statement of any insurer with

intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to whom the insurer is required by law to report, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, willfully omitting to make a true entry of any material fact pertaining to the business of the insurer in any book, report, or statement of the insurer.

(f) Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life, including, but not limited to, discrimination based on an individual's race, religion, gender, sex, origin, marital status, or sexual orientation, in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the contract.

This subdivision shall be interpreted, for any contract of ordinary life insurance or individual life annuity applied for and issued on or after January 1, 1981, to require differentials based upon the sex of the individual insured or annuitant in the rates or dividends or benefits, or any combination thereof. This requirement is satisfied if those differentials are substantially supported by valid pertinent data segregated by sex, including, but not necessarily limited to, mortality data segregated by sex.

However, for any contract of ordinary life insurance or individual life annuity applied for and issued on or after January 1, 1981, but before the compliance date, in lieu of those differentials based on data segregated by sex, rates, or dividends or benefits, or any combination thereof, for ordinary life insurance or individual life annuity on a female life may be calculated as follows: (a) according to an age not less than three years nor more than six years younger than the actual age of the female insured or female annuitant, in the case of a contract of ordinary life insurance with a face value greater than five thousand dollars (\$5,000) or a contract of individual life annuity; and (b) according to an age not more than six years younger than the actual age of the female insured, in the case of a contract of ordinary life insurance with a face value of five thousand dollars (\$5,000) or less. "Compliance date" as used in this paragraph shall mean the date or dates established as the operative date or dates by future amendments to this code directing and authorizing life insurers to use a mortality table containing mortality data segregated by sex for the calculation of adjusted premiums and present values for nonforfeiture benefits and valuation reserves as specified in Sections 10163.5 and 10489.2 or successor sections.

Notwithstanding the provisions of this subdivision, sex based differentials in rates or dividends or benefits, or any combination thereof, shall not be required for (1) any contract of life insurance or life annuity issued pursuant to arrangements which may be considered terms, conditions, or privileges of employment as these terms are used in Title VII of the Civil Rights Act of 1964 (Public Law 88-352), as amended, and (2) tax sheltered annuities for employees of public schools or of tax exempt organizations described in Section 501(c)(3) of the Internal Revenue Code.

(g) Making or permitting any unfair discrimination between individuals of the same class, including, but not limited to discrimination based on an individual's race, religion, gender, sex, national origin, marital status, or sexual orientation in the acceptance or rejection of any contract of insurance, in the rates charged therein, or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the contract.

The remedies available under subdivisions (f) and (g) shall be cumulative to those set forth under this code and shall not prohibit any other remedy provided by law.

(h) Marital status may be considered as a factor for the determination of rates to

be charged in automobile insurance policies, provided that said rates are based on actuarial studies and tables as approved by the Department of Insurance.

(g)

(i) Making or disseminating, or causing to be made or disseminated, before the public in this state, in any newspaper or other publication, or any other advertising device, or by public outcry or proclamation, or in any other manner or means whatever, whether directly or by implication, any statement that a named insurer, or named insurers, are members of the California Insurance Guarantee Association, or insured against insolvency as defined in Section 119.5. This subdivision shall not be interpreted to prohibit any activity of the California Insurance Guarantee Association or the commissioner authorized, directly or by implication, by Article 14.2 (commencing with Section 1063).

(h)

(ii) Knowingly committing or performing with such frequency as to indicate a general business practice any of the following unfair claims settlement practices:

(1) Misrepresenting to claimants pertinent facts or insurance policy provisions relating to any coverages at issue.

(2) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.

(3) Failing to adopt and implement reasonable standards for the prompt investigation and processing of claims arising under insurance policies.

(4) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss requirements have been completed and submitted by the insured.

(5) Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear.

(6) Compelling insured to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by the insured, when the insured have made claims for amounts reasonably similar to the amounts ultimately recovered.

(7) Attempting to settle a claim by an insured for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application.

(8) Attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of, the insured, his or her representative, agent, or broker.

(9) Failing, after payment of a claim, to inform insured or beneficiaries, upon request by them, of the coverage under which payment has been made.

(10) Making known to insured or claimants a practice of the insurer of appealing from arbitration awards in favor of insured or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration.

(11) Delaying the investigation or payment of claims by requiring an insured, claimant, or the physician of either, to submit a preliminary claim report, and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information.

(12) Failing to settle claims promptly, where liability has become apparent, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.

(13) Failing to provide promptly a reasonable explanation of the basis relied on in the insurance policy, in relation to the facts or applicable law, for the denial of a claim or for the offer of a compromise settlement.

(14) Directly advising a claimant not to obtain the services of an attorney.

(15) Misleading a claimant as to the applicable statute of limitations.

(16) Delaying the payment or provision of hospital, medical, or surgical benefits for services provided with respect to acquired immune deficiency syndrome or AIDS-related complex for more than 60 days after the insurer has received a claim for those benefits, where the delay in claim payment is for the purpose of investigating whether the condition preexisted the coverage. However, this 60-day period shall not include any time during which the insurer is awaiting a response for relevant medical information from a health care provider.



THE STATE BAR OF CALIFORNIA

OFFICE OF GOVERNMENTAL AFFAIRS

915 L STREET, SUITE 1280, SACRAMENTO, CALIFORNIA 95814

TELEPHONE: (916) 444-2762 FAX: (916) 443-0562

FACSIMILE COVER SHEET

TO: Thomas Coleman EXT. NO

FROM: Amy Stewart EXT. NO (916) 444-2762

DATE: June 25, 1992

TOTAL NUMBER OF PAGES 4 INCLUDING COVER SHEET

PLEASE CALL IF YOU DID NOT RECEIVE ALL OF THE PAGES

MESSAGE: Enclosed/Attached, you'll find a copy of SB 1923's analysis, and the proposed amendments

Update: Amended copy of bill is attached. As amended, the bill passed the Senate Insurance Committee. It is opposed by State Farm, Personal Insurance Federation and Association of California Life Insurance Companies. Opposition is mainly focused on the marital status discrimination prohibition. The bill is supported by the Department of INsurance.

TRANSMITTING TO FACSIMILE NUMBER: 213-258-8099

Compliments of: THOMAS F. COLEMAN President, EEO Seminars (213) 258-5831

DATE OF HEARING: May 13, 1992

SB 1923

**SENATE INSURANCE, CLAIMS AND CORPORATIONS COMMITTEE
ART TORRES, CHAIRMAN**

SB 1923 (Marks), As Introduced February 21, 1992

SUBJECT: Unfair Insurance Practices: Family or Marital Status

DIGEST:

Existing law declares that specified insurer claims practices are unfair methods of competition and unfair and deceptive acts or practices. These include:

- 1) Discrimination between individuals of the same class and life expectancy.
- 2) Failing to adopt and implement reasonable standards for prompt claims investigation and processing.
- 3) Not attempting in good faith to settle claims in which liability has become clear.
- 4) Failing to affirm or deny coverage of claims within a reasonable period of time.

This bill specifies that discrimination among classes of like individuals includes class based on race, religion, national origin, marital status or sexual orientation is an unfair insurance practice.

FISCAL EFFECT

The Department of Insurance may incur unknown, but probably minor (under \$50,000), annual regulatory costs for monitoring compliance with this bill's provisions. These costs would be payable from the Insurance Fund.

COMMENTS

This bill was introduced at the request of the California State Bar Association to provide an explicit prohibition against insurance discrimination based on marital status or sexual orientation.

Current law generally prohibits discriminatory practices of the sale of insurance (Ins. Code sec. 790) and is specifically subject to the standards of the Unruh Civil Rights Act (Ins. Code SEC. 1861.03).

Existing law does not establish specific sanctions for committing an unfair business practice. The value of defining a specific action as an unfair practice is that violation can be grounds for: 1) a bad faith lawsuit (if the violator does not meet federal standards as a self-insured business which would exempt it from state regulation), and 2) an investigation by the Department of

Insurance.

ISSUES

1. Does this bill increase Consumer Protection?

This bill as drafted enumerates those considerations that can be considered under the existing anti-discrimination provisions of the insurance law. Under current law, as well as this bill, the law prohibits discrimination among classes of individuals with "equal expectation of life".

This bill maintains the existing standards that prohibits discrimination between similar classes of individuals and therefore may not add any additional protection for those newly enumerated classes.

2. Does this bill decrease protection against sex-based discrimination?

This bill enumerates classes of people who may not be discriminated against based on their class to include race, religion, national origin, marital status, or sexual orientation. The bill does not include the sex of the individual of an enumerated class and may therefore be interrupted to lessen the protections against sex-based discriminatory practices.


POSITIONS

Support

State Bar Association

Opposition

State Farm
Personal Insurance Federation

Amey: 
Personal Insurance Fed said they would likely drop their opposition in view of the proposed amendments.



LOS ANGELES CITY TASK FORCE ON FAMILY DIVERSITY

May 19, 1988

The Honorable Michael Woo
Member, Los Angeles City Council;

The Honorable Tom Bradley
Mayor, City of Los Angeles;

The Honorable John Ferraro
President, Los Angeles City Council,
and Members of the City Council;

The People of the City of Los Angeles:

It is with pleasure that the thirty-seven members of the Los Angeles City Task Force on Family Diversity hereby submit our Final Report and recommendations.

When we began this project some two years ago, it quickly became obvious that a study of the strengths and weaknesses of contemporary family life in Los Angeles would be an enormous undertaking. We therefore organized ourselves into specific research teams, each focusing on selected family demographics, populations, topics, and problems. As part of our mandate, our research included an examination of families that have not traditionally had the benefit of public study and documentation.

Through our public hearings, we gathered information from a variety of witnesses — advocates, academics, service providers, and legal experts, as well as individuals who related personal experiences that helped illuminate problems in a very vivid way.

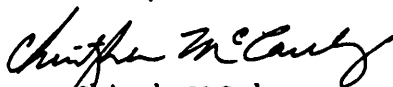
Although not encompassing every conceivable family issue, our Final Report includes analyses of a number of critical problems that vex contemporary families -- available and affordable housing, transportation, affordable insurance, child care, family violence and abuse, quality education, and issues related to employment opportunity and economic well-being.

Throughout this project we have attempted to recognize ways in which public policy may not be consistent with the reality of how we live. Where we have uncovered legal, institutional, or practical burdens imposed upon family life as a matter of public policy, we have suggested remedies. Where we have found programs or policies supporting family life, we have specifically commended them.

During the course of its study, the Task Force discovered that "family" is a very broad and expansive concept, which is capable of encompassing a wide variety of committed relationships. This conceptual flexibility is consistent with local family demographics. The City of Los Angeles is undeniably rich in family diversity.

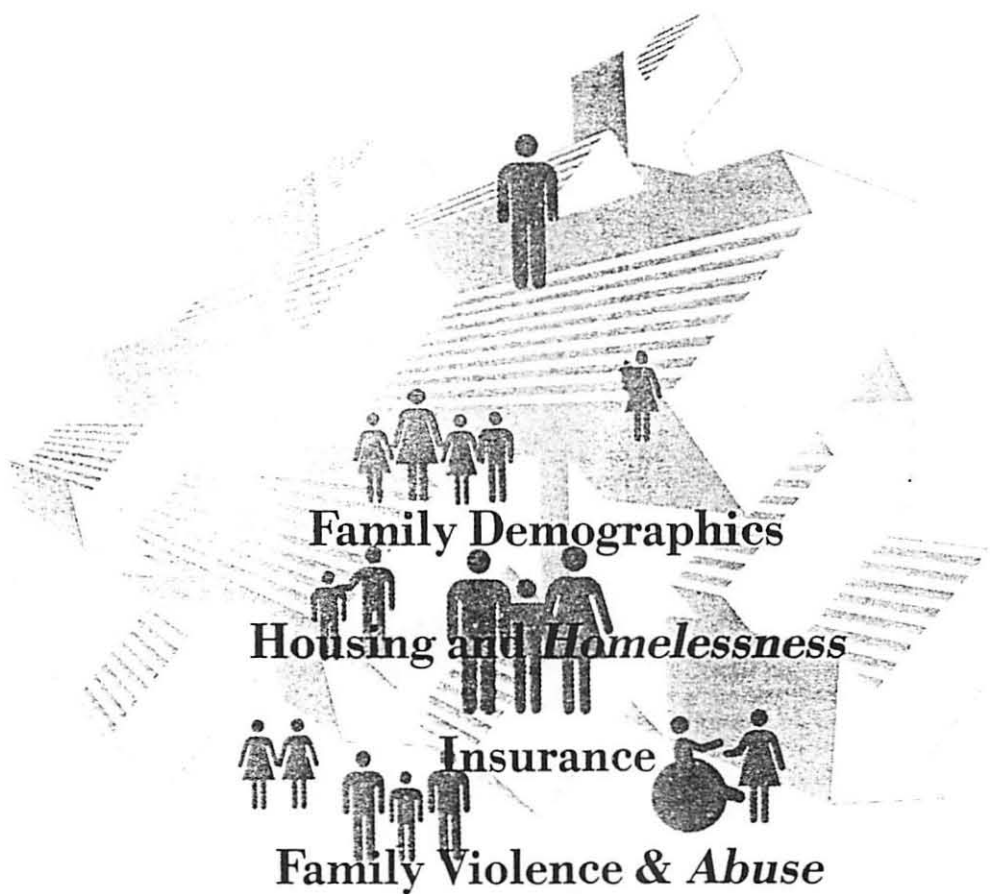
We appreciate the opportunity to have served the people of Los Angeles. We have learned enormously from everyone who participated in this project and we sincerely hope that all families will benefit from our findings and recommendations.

Sincerely,


Christopher McCauley
Co-Chair


Nora Baladerian, Ph.D.
Co-Chair

Families in the City of Los Angeles



Education & *City Schools*

Some Families and *Their Needs*

Institutional *Influences*



INSURANCE

Insurance is a subject of major concern to Los Angeles families. During a medical emergency, for example, health insurance may be all that stands between survival and ruination for one's family. Under the law, the family car must have liability coverage. If the car is financed, lenders insist that there is also replacement coverage. Mortgage companies demand that the family home be insured against hazards. Although life insurance is not "essential," many heads of household buy it in order to protect their dependents. Disability insurance can guarantee income that might otherwise be threatened by the extended illness of a family's primary wage earner. Most families in the city are renters; renter's insurance guards against the ever-increasing risk of burglary. Obtaining and maintaining insurance — health, life, automobile, homeowner's, renter's, and more — has become a very serious and important matter; it is essential to protect family assets, to protect family members, and in some instances, is required by law.

According to Steve Miller, Executive Director of Insurance Consumers Action Network (ICAN), about 13% of the disposable income of a family is spent on insurance.¹ That makes insurance the third leading family expenditure — after shelter and food, but before taxes.²

Although insurance is a necessity for everyone, its cost is often prohibitive for middle and lower-income families; it is not a luxury, but it is often priced as if it were.

The impact of the so-called insurance crisis is being experienced by parents who cannot afford automobile insurance for their teenagers, seniors who are dropping their homeowner policies, lower-income workers who drive to and from work uninsured, and middle-income workers denied health and life insurance, not because they cannot afford it, but because of lifestyle discrimination.

As a reaction to this crisis, more than 25,000 Los Angeles area consumers recently expressed their frustration in letters sent to Tom Vacar, Consumer Reporter to KCBS-TV in Los Angeles.³ Of the first 16,000 letters analyzed, 90% complained about automobile insurance. Many others criticized homeowner and health insurance, and the high premiums that are causing day care centers to close. People complained most about "insurance company greed," than the lack of affordability. Most of the consumers suggested a need for more active state regulation of the insurance industry. A considerable number wanted the state to actually take over the industry.

The California Department of Insurance also receives a large number of complaints from consumers, nearly 14,000 in 1984-85, for example.⁴ However, according to the state Auditor General, these complaints reflect only a portion of disgruntled insurance consumers.⁵ Many find it difficult to reach the department; during a one-week period in March 1986, consumers received busy signals more than 7,000 times when attempting to telephone the Department of Insurance.⁶ Citing such problems as the department's overwhelming backlog in processing complaints, the Auditor General concluded that "the public lacks protection against improper conduct" by insurance companies.⁷

The Task Force on Family Diversity examined the insurance issue with the assistance of law student researchers,⁸ with input from the Association of California Life Insurance Companies,⁹ with information from the legal counsel to the state Department of Insurance, with advice

from consumer advocates,¹⁰ with testimony from insurance professionals,¹¹ and with recommendations supplied from Task Force members.¹²

The major areas of complaint that surfaced during the Task Force study focused on the price of automobile coverage and on lifestyle discrimination in automobile, health, and life insurance.

Automobile Insurance

Under present California law, automobile insurance rates are minimally regulated. In other states, rates are regulated by various methods. Some states establish rates insurers may charge; others require prior approval of rates by the Insurance Commissioner. Most states provide some form of review either as rates are introduced or changed.¹³

The current law in California — virtually unchanged since enacted in 1947 — provides for an "open rating" or competitive ratemaking system; although the law requires that insurance rates not be excessive, inadequate, or unfairly discriminatory, the law includes no concrete standards and is generally not enforced by the state Insurance Commissioner. Under existing law, companies are not even required to report to the insurance department the rates they charge consumers.

Two years ago, the Little Hoover Commission reported that: "The Insurance Commissioner has held only one public hearing on excessive rates and has never fined an insurance company for excessive rates since 1948."¹⁴ The Commission identified as one of the major underlying causes of the insurance crisis:¹⁵

The Insurance Commissioner's lack of authority and leadership in the rate-setting process — the Insurance Commissioner does not have authority to control rate increases in California [prior to the increase] and has not exercised his [sic] discretionary powers to control rate increases [after an increase] and make insurance available.

The Little Hoover Commission recommended that consideration be given to requiring the Insurance Commissioner's prior approval of rate increases in excess of 15%.¹⁶

Two recent studies have demonstrated the relationship between state regulation and the cost of insurance. The General Accounting Office — the investigative arm of Congress — found that the cost of automobile insurance was always higher in "competitive" rating states like California where there is no rate regulation. Rates in so-called "competitive" states were about 14% higher than in regulated states.¹⁷ A study commissioned by the California State Assembly found that the profits of automobile insurance companies in California were about 30% higher than in states with a stronger regulatory environment.¹⁸

It is a misnomer to call California an "open rating" or "competitive" state for automobile coverage. Price fixing by insurance companies is not illegal under federal law,¹⁹ nor is it illegal under state law.²⁰ Current law authorizes insurers to act "in concert" in setting rates, thus conferring upon insurance companies a unique exemption from antitrust laws. Last year, Attorney General John Van de Kamp addressed this problem:²¹

Nothing prohibits insurance companies from fixing rates, from agreeing not to compete, from allocating territories

to one another, from obtaining and exploiting a monopoly in any line of insurance. And no other industry enjoys this kind of sweeping exemption from the antitrust laws. . . .

This immunity is unhealthy for consumers and it is unhealthy for the industry itself. It breeds a culture of collusion. Hearings before the Department of Insurance last year revealed that the two largest auto insurers in the state had a practice of routinely exchanging their rating books — in effect their price lists. Such exchanges suggest a fundamentally unhealthy pattern of collusive conduct.

The Task Force on Family Diversity agrees that the current exemption of insurance companies from the state's antitrust laws is inappropriate and harmful to the people of the state. The exemption should be repealed so that price fixing by insurers would be unlawful and so the exchanging of price information among insurers with the purpose of suppressing competition would also be illegal.²²

Many insurers claim that price fixing does not exist and that consumers can find the lowest rate and best coverage by shopping around. However, one recent consumer study found that price shopping for insurance coverage is virtually impossible.²³

"Redlining," a practice in which insurers set prices through a complex formula of residential location, occupation, age and sex classifications, is also a subject of extensive criticism. State Senator Art Torres has called for legislation prohibiting the setting of rates on any factor other than an individual's driving record.²⁴

More and more people in this state cannot afford auto insurance even though they have good driving records. Insurance rates should be based on a person's driving record, not on his or her zip code, marital status, occupation, or sex. That is unfair.

Redlining of certain areas and groups makes minimum auto liability insurance so expensive that an estimated 50% to 60% of drivers in some sections of Los Angeles, and 15% to 20% statewide, are uninsured.²⁵

Insurance Reform. In addition, noting that California is one of only five states that allow automobile insurance companies to raise prices without justifying the size of rate increases, Attorney General John Van de Kamp has joined consumer advocates and many legislators in calling for rate regulation.²⁶ Last year, the Attorney General supported proposed legislation which would have: (1) enacted a system of flex-rating for property/casualty insurance; (2) created an insurance consumer advocate's office within the Department of Justice; (3) required prior approval by the Insurance Commissioner of any rate increases exceeding 10% in personal lines or 25% in commercial lines and (4) established an Office of Consumer Advocate to present a public point of view of proposed rate changes.²⁷ Although the bill, and several proposed compromises, passed the Assembly Finance and Insurance Committee, it failed to pass the Assembly Ways and Means Committee, thus ending consumers' hopes for legislative relief.²⁸

According to the Attorney General, "It's a stalemate. The powers have basically produced gridlock."²⁹ As a result, he suggested that the only path to reform might be a statewide ballot initiative.

The Task Force on Family Diversity believes that the following reforms should be enacted into law either by the Legislature or through the initiative process: (1) *rate regulation* — rate increases or decreases that exceed specified ranges should require prior approval by the state Insurance Commissioner; (2) *antitrust exemption* — the insurance industry should be stripped of its exemption from the state's antitrust laws; (3) *insurance consumer advocate* — an Office of Insurance Consumer Advocate should be established, with authority to intervene on behalf of consumers in any rate-related matter; (4) *good driver discounts* — insurers should be required to offer "good driver" policies to customers who have had no accidents or moving violations within the past three years; (5) *plain language policies* — insurance policies should be required to be written so that they are concise and easy to read; (6) *mid-term cancellations* — policies should not be cancelable in midterm, except for nonpayment of premiums, fraud, gross negligence or criminal convictions; (7) *conflict of interest* — the Insurance Commissioner and the Consumer Advocate should be barred from employment with any insurance company or trade association for three years after leaving office.

Seven initiative proposals for insurance reform have emerged.³⁰ Three have been offered by consumer advocacy organizations; two are sponsored by individuals; one is backed by insurance companies; and one has been drafted by trial lawyers.³¹ The Task Force believes that either of the proposals offered by two of the consumer advocacy groups — Access to Justice or Insurance Consumer Action Network — most closely promote these seven areas of reform.³²

The need for insurance reform in California became even more critical when the California Supreme Court upheld the constitutionality of the state's mandatory auto liability insurance laws.³³ Under state law, a motorist stopped for a moving violation must produce proof of insurance. Failure to do so may result in a fine and a suspension of the motorist's driver's license. In the wake of the Supreme Court ruling, Mayor Tom Bradley endorsed a proposed ballot initiative prohibiting automobile insurance redlining and requiring Insurance Commissioner approval for all rate increases.³⁴

The Task Force on Family Diversity finds that insurance reform in California is long overdue. The Task Force commends Mayor Bradley and Attorney General Van de Kamp for supporting meaningful insurance reform, even if it must come in the form of a voters' initiative. The Task Force recommends that the City Council support either the initiative proposal sponsored by access to justice or that proposed by the Insurance Consumer Action Network (ICAN).

Lifestyle Discrimination

During the course of this study, the Task Force has become aware of widespread lifestyle discrimination by insurance companies in California and throughout the nation. By "lifestyle discrimination," the Task Force is referring to situations in which insurers deny coverage, set higher rates, or cancel policies because of the sexual orientation or cohabitation status of the applicant or the insured. Complaints of lifestyle discrimination have been raised by both unmarried heterosexual couples and same-sex couples.

Widespread complaints regarding discriminatory underwriting practices by California insurance companies were confirmed by consumers, consumer advocates, civil rights advocates, the Insurance Commissioner's office, as well as insurance brokers and agents.

According to a representative of Common Cause, insurance coverage is often denied in Southern California because of the consumer's choice of neighborhood, choice of automobile, or choice of life partner. For example, a local insurance company refused to grant automobile insurance to a woman merely because she was a "military wife," i.e., her spouse was enlisted in the Navy.³⁵

In his public hearing testimony, Tony Melia, President of National Business Insurance Agency (NBIA), described lifestyle discrimination by insurance companies in property and casualty insurance.³⁶ He related that some companies refuse to issue a joint homeowner's policy in the names of two same-sex householders, as their interests may appear on a deed, although joint policies are issued routinely to married couples. Most companies will not offer a family discount on automobile insurance to an unmarried couple who live together and share cars, even though such discounts are offered to blood relatives and married couples. One company actually wrote to NBIA and complained that the agency was writing too many policies for unmarried persons.

Brendt Nance, President of Concerned Insurance Professionals for Human Rights, documented lifestyle discrimination in health, life, and disability insurance.³⁷ He reported that some companies refuse to issue a life insurance policy if the consumer names a beneficiary who is not related by blood, marriage, or adoption. One major carrier charges two unmarried 35-year-olds a total of \$213.60 per month for basic health coverage, while a married couple could purchase the same coverage for \$197 per month.

Leonard Graff, Legal Director for National Gay Rights Advocates (NGRA), testified concerning lifestyle discrimination against gays and lesbians.³⁸ Complaints received by NGRA about automobile insurance, homeowner and renter policies, umbrella or excess liability policies, and health insurance relate to outright denial of coverage, the naming of beneficiaries, and, most often, rate discrimination against unmarried couples.

One company, the Automobile Club of Southern California, recently extended family discounts for automobile insurance coverage to unmarried couples. Previously, the discount was available only to married couples.³⁹ Some companies have followed AAA's example, but others continue to extend family discounts only to married couples. The AAA reform, however, only applies to insurance but not to membership in the Auto Club. The Automobile Club of Southern California continues to maintain membership discount practices which discriminate against unmarried couples. For example, a married couple may purchase one master membership and a discounted associate membership, while an unmarried couple must pay for two master memberships. In view of changing demographics and family structures in Southern California in 1987, the Auto Club created an internal AAA Task Force to review membership rating practices and to recommend possible revisions to the Board of Directors. The AAA Task Force will recommend ways in which the club's membership rules can be amended to accommodate the needs of contemporary families.

Unmarried couples also experience lifestyle discrimination when attempting to purchase renter's insurance. Renter's insurance protects occupants of an apartment or house against property damage or liability. Most insurance companies will not issue a policy jointly to an unmarried couple renting an apartment; two policies, with two pre-

miums, are required. A married couple, however, can save money by obtaining a joint policy.

According to Leonard Graff, lifestyle discrimination in home and automobile insurance is primarily rate discrimination on the basis of marital status or sexual orientation.

California Administrative Code Section 2560.3 prohibits insurers from discriminating against consumers on the basis of marital status or sexual orientation. However, the Insurance Commissioner has interpreted the law narrowly so as not to apply to the type of lifestyle discrimination just described. According to Graff:⁴⁰

Well, they [Insurance Commissioner's Office] don't feel that those regulations cover the situation involving couples. In other words, in the examples that I have been describing — like automobile insurance — people, regardless of their sexual orientation, are not having too much trouble getting a policy because they are gay or lesbian. The problem is getting a discount because they are a couple. And in my conversations with Peter Groom [Legal Counsel to the Insurance Commissioner], he's taking the position that this is "rate discrimination" and is beyond the jurisdiction of the Commissioner.

Unmarried couples, who write to the Insurance Commissioner's Office complaining of such lifestyle discrimination,⁴¹ are simply informed that there is nothing that the Insurance Commissioner can do.⁴²

The Task Force on Family Diversity recommends several actions that the Insurance Commissioner and other agencies can take to protect unmarried couples from the continuing and widespread lifestyle discrimination.

First, the Insurance Commissioner can declare various practices against unmarried couples to be "unfair practices," such as refusal to issue a joint renter's or homeowner's policies to an unmarried couple living together in their jointly owned or rented residence. Granting discounts to cohabiting couples who are married while denying such discounts to similarly situated unmarried couples should also be declared an "unfair practice," as should the refusal of an insurance company to allow a life insurance applicant to name a lifemate as beneficiary.

The California Insurance Code provides for remedies through the Insurance Commissioner against unfair practices engaged in by those in the business of insurance.⁴³ The Commissioner should use the power provided in the code to conduct investigations of such unfair practices, and, where appropriate, commence administrative actions against violators.⁴⁴ If a company continues such practices after an administrative hearing, adverse determination, and warning,⁴⁵ the Commissioner should, through the state Attorney General, seek a restraining order against the company.⁴⁶ Any company who defies a court order, in addition to a contempt proceeding, faces fines and possible suspension of license or certificate to engage in the insurance business.⁴⁷

Although it appears that the Insurance Commissioner has the authority to address instances of lifestyle discrimination through the complaint procedure authorized by the Insurance Code,⁴⁸ such action has not been taken to date.

The Task Force on Family Diversity calls on the Insurance Commissioner to officially rule that lifestyle discrimination by insurance companies, including rate discrimination against unmarried couples, is an unfair business practice. The Mayor and the City Council should communicate with the Commissioner, expressing their concern for the protection of unmarried couples living in the city, urging the Commissioner to use the authority to regulate and restrain such practices.

Furthermore, the Unruh Civil Rights Act may provide an additional mechanism for protection.⁴⁹ The Unruh Act bars all forms of arbitrary discrimination by business establishments of every kind. Sexual orientation discrimination is prohibited by the Unruh Act.⁵⁰ It would seem that marital status discrimination is arbitrary in many contexts. California statutes forbidding such discrimination have been interpreted to prohibit discrimination against unmarried couples.⁵¹ By analogy, it would appear that discrimination by insurance companies against unmarried couples would violate the Unruh Civil Rights Act.

The Attorney General, the state Department of Fair Employment and Housing (DFEH), district attorneys and city attorneys all have jurisdiction to enforce the Unruh Civil Rights Act.⁵² Individual complaints may be investigated and processed by DFEH. The Attorney General or local district or city attorneys may bring court actions to enjoin a "pattern or practice" violating the Unruh Act; they may also bring civil actions under "unfair competition" statutes to enjoin unfair or unlawful business practices.⁵³ Thus, remedies exist beyond those found in the Insurance Code.⁵⁴ However, since consumers file their complaints primarily with the Insurance Commissioner's Office, these agencies seldom, if ever, learn of, or process, cases involving unfair practices by insurance companies. And in the case of lifestyle discrimination, the Insurance Commissioner closes case files without referring the consumer to other agencies which may have jurisdiction under the Unruh Act or Business and Professions Code.

The Task Force on Family Diversity has several recommendations about improving the way cases involving lifestyle discrimination by insurance companies are handled by government agencies.

First, as mentioned above, the Insurance Commissioner should deem such discrimination to be an unfair practice and take action under the Insurance Code.

Second, the Insurance Commissioner should routinely refer cases to other agencies with possible jurisdiction.⁵⁵ If the Commissioner receives a complaint about lifestyle discrimination and declines to take action, the letter of complaint should be forwarded to the Attorney General for possible relief under the Unruh Act. Such referrals will enable the Attorney General to determine if a discriminatory pattern or practice exists. The Attorney General can then either take direct action, or refer the matter to the appropriate district attorney or city attorney.

Third, the Los Angeles City Attorney should specifically request that the Insurance Commissioner forward to the City Attorney copies of lifestyle discrimination complaints involving transactions occurring in the City of Los Angeles. This will enable the City Attorney to determine if unfair business practices are occurring in the city so that such patterns and practices can be enjoined.

Fourth, the City Attorney should convene an Insurance Task Force on Lifestyle Discrimination. Representatives of the Attorney General's

Office, the Insurance Commissioner's Office, the state Department of Fair Employment and Housing, civil rights groups, consumer protection groups, and the insurance industry should be invited to participate on the Task Force. The purpose of the Insurance Task Force would be to make recommendations for improving the ways in which lifestyle discrimination is handled by state and local agencies with apparent jurisdiction in this area.

INSURANCE: RECOMMENDATIONS

27. The Task Force recommends that the City of Los Angeles adopt a legislative policy statement on insurance to guide its legislative program in Sacramento and Washington, D.C. The policy should: support the repeal of current state and federal exemptions of the insurance industry from antitrust laws; oppose "redlining" practices; support the adoption of a "flex-rating" system of prior approval for property and casualty insurance; and support the creation of an insurance consumer advocate's office within the California Department of Justice.

28. The Task Force recommends that the Mayor and the City Council support a 1988 insurance reform ballot initiative containing strong provisions on rate regulation, antitrust protections, consumer advocacy, and conflict of interest. The measures which most closely would meet these goals are those proposed either by the Insurance Consumer Action Network (ICAN) or access to justice (voter's revolt).

29. The Task Force recommends that the state Insurance Commissioner declare various practices against unmarried couples to be "unfair practices," including the refusal to issue a joint renter's or homeowners's policy to an unmarried couple living together in a jointly owned or jointly rented residence, the denial of discounts to unmarried couples while granting such discounts to married couples, and the refusal to allow a life insurance applicant to name a non-spousal lifemate as a beneficiary.

30. The Task Force recommends that the Mayor and the City Council communicate to the state Insurance Commissioner their concern about lifestyle discrimination by insurance companies, asking the Commissioner to outlaw lifestyle discrimination as an unfair business practice.

31. The Task Force recommends that the Insurance Commissioner routinely refer complaints of lifestyle discrimination to other agencies with possible jurisdiction. If the Commissioner receives a complaint of lifestyle discrimination from an insurance consumer and declines to take action, the letter of complaint should be forwarded to the Attorney General for possible relief under the Unruh Act. Such referrals will enable the Attorney General to determine if a discriminatory pattern or practice exists. The Attorney General can then either take direct action or refer the matter to the appropriate district attorney or city attorney.

32. The Task Force recommends that the Los Angeles City Attorney specifically request that the state Insurance Commissioner forward to the City Attorney copies of lifestyle discrimination complaints involving transactions occurring in the City of Los Angeles. This will enable the City Attorney to determine if unfair business practices are occurring in the city so that such patterns and practices can be enjoined.

33. The Task Force recommends that the City Attorney convene an Insurance Task Force on Lifestyle Discrimination. Representatives of

the Attorney General's Office, the Insurance Commissioner's Office, the state Department of Fair Employment and Housing, civil rights groups, consumer protection groups, and the insurance industry should be invited to participate on the Task Force. The purpose of the Insurance Task Force would be to make recommendations to improve the manner in which lifestyle discrimination is handled by state and local agencies with apparent jurisdiction over arbitrary or unfair business practices.

Insurance: Notes

¹ Interview with Steve Miller, June 5, 1987, at the offices of ICAN in Los Angeles.

² *Ibid.*

³ Interview with Tom Vacar, June 2, 1987, at the offices of KCBS-TV in Los Angeles.

⁴ Reich, Kenneth, "State Insurance Department Found Far Behind on Complaints," *Los Angeles Times*, May 13, 1986.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

⁸ Kan, Ada, "Insurance Discrimination," *Report of the Task Force on Family Diversity: Supplement — Part Two*, p. S-871.

⁹ Letter from Lewis Keller, President of the Association of California Life Insurance Companies, dated March 26, 1987.

¹⁰ Miller, *supra*, at note; Vacar, *supra* at note 3.

¹¹ Testimony of Tony Melia, President of the National Business Insurance Agency, and Brendt Nance, Concerned Insurance Professionals for Human Rights, *Public Hearing Transcript*, pp. 189-202.

¹² Vopal & Verdugo, "Report of Research Team on Insurance Discrimination," *Report of the Task Force on Family Diversity: Supplement — Part One*, p. S-563.

¹³ Miller, Steve, "Insurance Regulation Needs Accountability," published by Insurance Consumer Action Network, 1987.

¹⁴ Commission on California State Government Organization and Economy, "A Report on the Liability Insurance Crisis of California," July, 1986, p. 1.

¹⁵ *Id.*, p. 2.

¹⁶ *Id.*, p. v.

¹⁷ United States General Accounting Office, "Auto Insurance, State Regulation Affects Cost and Availability," GAO/OCE-86-2, August 1986, p. 3.

¹⁸ National Insurance Consumer Organization, "Insurance in California: A 1986 Status Report for the Assembly," October, 1986, p. II-1.

¹⁹ Congress exempted insurance companies from federal antitrust regulation when it passed the McCarran-Ferguson Act in the 1940s (15 U.S.C. Sec. 1101).

²⁰ The McBride-Gorunsky Act was passed by the California Legislature, also in the 1940s (Insurance Code Section 1850).

²¹ Testimony of Attorney General John Van de Kamp before the Assembly Judiciary Committee in support of A.B. 1190, May 20, 1987.

²² Assembly Bill 1190 by Assemblywoman Maxine Waters would have accomplished this result. After heated debate, it failed to pass the Assembly Ways and Means Committee during the 1987 Legislative session.

²³ Reich, Kenneth, "Shopping Around for Car Insurance: It's 'Potluck'," *Los Angeles Times*, June 24, 1987.

²⁴ "Anti-redlining Bill Dies in Senate Committee," *Mt. Washington Star Review*, May 14, 1986.

²⁵ Salisbury, Lois, "Who Will Pay for Brown's Auto Insurance Tinkering?" *Los Angeles Times*, May 4, 1986.

²⁶ "Van de Kamp Urges State Insurance Rate Regulation," *Los Angeles Herald Examiner*, May 19, 1987.

²⁷ Reich, Kenneth, "Insurance Bill Clears Hurdle in Assembly," *Los*

Angeles Times, May 20, 1987.

²⁸ Dresslar, Tom, "Alternative Insurance-Rate Measure Would Rely on Consumers," *Los Angeles Daily Journal*, June 29, 1987; "Insurance: Open the Books," *Los Angeles Times*, July 1, 1987; Dresslar, Tom, "Prospects Darken for Reform of State Insurance Laws in '87," *Los Angeles Daily Journal*, August 27, 1987.

²⁹ Braun, Gerry, "State's Insurance Storm Passes," *San Diego Union*, February 9, 1987.

³⁰ "Summary of Seven Measures on Insurance Reform," *California Political Week*, January 25, 1988.

³¹ *Ibid.*

³² *Ibid.* The measure sponsored by Access to Justice calls for a 20% automobile insurance rate rollback, elimination of antitrust exemption, rate regulation by the Insurance Commissioner, and rates based on driving records and not zip codes. The initiative offered by Insurance Consumer Action Network calls for similar reforms, but extends to all kinds of insurance coverage, with special senior citizen protections.

³³ *King v. Meese* (1987) 43 Cal.3d 1217; Carrizosa, Philip, "State High Court: Car Insurance is Now Mandatory," *Los Angeles Daily Journal*, October 27, 1987.

³⁴ Reich, Kenneth, "Three Officials Back Proposed Initiative on Car Insurance," *Los Angeles Times*, November 3, 1987.

³⁵ Interview with Wally Zelman, Common Cause, June 3, 1987.

³⁶ Testimony of Tony Melia, "Lifestyle Discrimination in Property/Casualty Insurance," *Public Hearing Transcript*, p. 189.

³⁷ Testimony of Brendt Nance, "Lifestyle Discrimination in Health/Life/Disability Insurance," *Public Hearing Transcript*, p. 196.

³⁸ Testimony of Leonard Graff, "Lifestyle Discrimination by Insurance Companies," *Public Hearing Transcript*, p. 114. See also, Freiberg, Perter, "Antigay Insurance Company Sued," *The Advocate*, June 10, 1987.

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ Interview with Peter Groom, Legal Counsel to the state Department of Insurance, March, 1987.

⁴² *Ibid.*

⁴³ Insurance Code Section 790 *et seq.*

⁴⁴ Insurance Code Section 790.06.

⁴⁵ Insurance Code Section 790.06(a).

⁴⁶ Insurance Code Section 790.06(b).

⁴⁷ Insurance Code Section 790.07.

⁴⁸ Insurance Code Sections 1292L3-1292L4; Section 790 *et seq.*

⁴⁹ Civil Code Section 5L.

⁵⁰ *Rolon Kukwitzky* (1984) 153 Cal.App.3d 289; *Curran v. Mount Diablo Council of Boy Scouts* 1985 147 Cal.App.3d 712.

⁵¹ *Hess v. Fair Employment and Housing Commission* (1982) 138 Cal.App.3d 232; *Department of Fair Employment and Housing v. Boy Scouts of America*, Before the Fair Employment and Housing Commission, Precedent Decision No. FEP 78-709, filed August 6, 1981.

⁵² Government Code Sections 12948, 12960-12976; Civil Code Section 52(c).

⁵³ Business and Profession Code Section 17200 *et seq.*; *Perdue v. Crocker National Bank* (1985) 38 Cal.3d 913, 930.

⁵⁴ Insurance Code Section 12994.

⁵⁵ When the Insurance Commissioner receives information that an insurance company may be violating a statute from a code other than the Insurance Code, such as the Unruh Civil Rights Act or provisions of the Business and Professions Code, public policy contemplates that the Commissioner will refer the matter to the appropriate agency with authority to investigate and take action. (Cf. Insurance Code Section 12928).

CITY GOVERNMENT

The government of the City of Los Angeles has a powerful institutional influence on local family life. The city passes ordinances, adopts policies, collects and spends revenues, manages programs, lobbies other branches and levels of government, and employs tens of thousands of workers. These government activities directly and indirectly affect families throughout the city.

This portion of the Task Force report focuses on how the City of Los Angeles, in its various administrative and legislative capacities, can better serve the needs of local residents and their families.

The City as Employer

The City of Los Angeles, through its various agencies and departments, employs about 40,000 workers.¹ The primary civilian workforce of city government consists of about 20,000 employees. An additional 10,000 sworn personnel work for the Police Department and Fire Department. Another 10,000 people are employed by the Department of Water and Power. As an employer, the city can assure respect for family diversity and ensure that family status or household composition is not used as a basis for discrimination.

Minimum Wage

Research by the staff of the California Industrial Welfare Commission indicates that it would be necessary to raise the minimum wage to \$5.01 per hour to lift minimum wage workers to the standard of living they had in 1967.² Statistics show that about 30% of minimum-wage workers are heads of households, a majority of them being women or minorities.³

Last year, attempts by the state Legislature to raise the minimum wage from \$3.35 per hour resulted in a governor's veto after receiving strong opposition from groups such as the California Chamber of Commerce.⁴ Other local organizations such as the Mexican Chamber of Commerce, United Neighborhoods Organizing Committee, and the East Valleys Organization asserted the need for an increase.⁵

The state Industrial Welfare Commission recently approved an increase in the minimum wage to \$4.25 per hour. While any increase will help workers with dependents, a higher minimum wage is still needed. The Task Force on Family Diversity commends the City of Los Angeles for increasing the pay of its own minimum-wage workers to \$5.01 per hour.⁶ The Task Force recommends that the City Council and the Mayor continue to press Congress, the California Legislature and the Industrial Welfare Commission to increase the minimum wage for all workers to \$5.01 per hour in 1989.

Flexible Scheduling

Because of extraordinarily dense freeway traffic, commuting to and from work is already a major problem for many employees. Unless some innovative actions are taken, work-related commuting will only become more time consuming. Between now and the year 2000, the greater Los Angeles area is expected to experience the nation's largest overall population growth.⁷ The region will also gain some 805,000 new jobs in that period.⁸ Demographers predict that the labor force also will become older and more diverse by the turn of the century.⁹

Shifting workers away from the standard 9-to-5 work schedule could help ease transportation problems.¹⁰ Not all work needs to be done during these hours, not all work needs to be done at the jobsite, and not all employees must work fulltime.¹¹ Rearranging work schedules to allow for more flex-time, part-time, and home-based work could also fit the lifestyle needs of workers with dependent children,¹² and those who care for elderly parents.¹³ The city encourages ridesharing and has adopted some flexibility in scheduling; much more is necessary.

For several years, Councilwoman Joy Picus, chair of the council's Personnel and Labor Relations Committee, has suggested ways to bring the workplace into line with the needs of today's family. She has called for revised employment practices, such as dependent care, "cafeteria-style" benefits packages, and flexible work hours. The Task Force on Family Diversity commends Councilwoman Picus for her leadership in developing and promoting a "Family Economic Policy" for the City of Los Angeles.

Child Support Payments

Councilwoman Ruth Galanter and City Controller Rick Tuttle have proposed that the city help collect child support payments from city employees with support obligations.¹⁴

Under the plan, the city controller's office would provide the names of all city employees to the district attorney's office to be cross-referenced against names of parents who are delinquent in child support payments. City employees with child support obligations, whether delinquent or not, could also request that the city withhold the monthly payment from their paychecks and forward it to the custodial parent.

Two years ago, the controller exchanged names with the district attorney, identifying 185 city employees who together owed more than \$1 million in past due child support.

The Task Force on Family Diversity commends Councilwoman Ruth Galanter and Controller Rick Tuttle for their leadership in developing and promoting the child support payroll deduction program. The Task Force recommends that the City Council and the Mayor approve the plan.

Employee Benefits

The structures and demographics of local families have changed over the years. A recent survey of the civilian workforce demonstrates that city workers and their families have been a part of this change.

Last year, the Personnel Department sent a questionnaire to 20,000 civilian workers, 8,000 of whom responded.¹⁵ The results show that the city has a diverse workforce:¹⁶

- * About 11% have a "traditional" marital arrangement with one employed spouse and one homemaker spouse.
- * About 49% are part of a dual-income household, with both spouses employed outside the home.
- * About 5% live with a domestic partner.
- * About 35% are single.

The city's present employee benefits package favors employees with homemaker spouses over all other living arrangements; about two-thirds of those responding to the survey predictably favored the city switching to a flexible benefits plan.¹⁷

The Task Force has studied existing and proposed benefit programs involving family sick leave, family bereavement leave, health and dental plans, and dependent care. The findings and recommendations of the Task Force are based on student research,¹⁸ public hearing testimony¹⁹ and research done by Task Force members,²⁰ as well as information provided by the City Personnel Department, the City Administrative Officer, and the Office of the Chief Legislative Analyst.

Historical Background. The terms "employee benefits," or "fringe benefits," have been used interchangeably to refer to the extra payments, services, and insurance that, together with salary, comprise an employee's total compensation. Health insurance, sick leave, leaves for personal purposes such as maternity or bereavement, pension plans, and vacation benefits are traditional components of employee benefits programs. However, in today's competitive employment marketplace, the purpose and point of employee benefits is often overlooked or ignored; in the context of the city, as elsewhere, a circumspect examination reveals that the traditional benefits package no longer meets the needs of most current employees.

Years ago, the paycheck or weekly wage represented the total remuneration for an employee's services. During the Industrial Revolution, pension plans, with long deferred vesting and strict employee controls, were introduced in an attempt to keep an employee tied to a particular job.²¹ During the World War II labor shortages, salary alone was no longer a sufficient inducement to attract the desired personnel; something more had to be offered. Since wages and salaries were subject to the federal stabilization rules that had been enacted during the Depression, employers were compelled to offer different kinds of employee benefits in order to compete for the limited labor supply.²²

Benefits were originally designed, in other words, as a tool to attract and hold the desired type and number of employees. Contemporary analysts still acknowledge that benefits plans "should aid (or at least not impede) the hiring of desired people."²³ After the employee has been attracted to a particular employer by the offer of certain types of benefits, the agreement by the employer to compensate the employee with such benefits becomes a contractual obligation. Indeed, California courts have held that benefits, such as retirement benefits, "do not derive from the beneficence of the employer, but are properly part of the consideration earned by the employee."²⁴

Since the philosophy of employee benefits is to satisfy some of the employee's needs, in addition to the need for monetary compensation, it is critical that the employer understand the nature of those needs. If a workforce were homogeneous, the needs of all employees would be fairly easily discernible by the well-informed employer, and the design of an attractive benefits package would pose no problem;²⁵ an employee heading a single-wage-earner family traditionally needed life, medical, and accident insurance plans covering the employee, and sometimes the employee's dependents.²⁶

In today's workforce, women compose 45% of those employed.²⁷ While the number of working women who have young children is increasing, the average working woman still earns only about 60% of

what the average working man earns.²⁸ Perhaps even more significantly, with the number of elders in our society growing steadily, employees, and female employees in particular, face increased demands to care for aging family members.²⁹ Both children and family elders present examples of financial dependency that create special hardships for women whose salaries are based on the traditional male head-of-household nuclear family model. A realistic assessment of employee needs would require breaking with tradition.

Demographics cited throughout this report demonstrate how much family structures have changed over the years.³⁰ To be competitive, an employer must now compensate an employee with a total compensation package that meets the employee's particular needs and that the employee can utilize fully. For example, the single working mother needs child care benefits and sick leave to care for family members, but may not need, or be in a position to utilize, a deferred compensation plan or spousal medical coverage.

Yet, the most important problem with current benefits programs remains the inequity in total compensation for two employees performing the same job. Discrimination has been defined as the making of decisions based on criteria other than productivity.³¹ The decision to compensate one employee in the form of employee benefits at a higher level than another employee is discriminatory when the only basis for making the decision is the fact that the privileged employee conforms to an outdated societal norm which the benefits package was originally designed to serve. Many employers, including the City of Los Angeles, need to reexamine their traditional program with an eye toward developing a means of assuring that each employee is compensated at a level equal to the compensation given other employees doing the same job in the same job classification. Those employers who refuse to recognize the changing family lifestyles of today's employees will find themselves not only out of the competition for the most desired workers, but also burdened with a benefits program that can only be described as wasteful.³²

Current City Programs. The basic benefits currently available to city employees include health and dental care, retirement, vacation, sick leave and bereavement leave. Employees have a choice of four health plans, under each of which the city subsidizes monthly premiums at a rate agreed upon in each employee group's Memorandum of Understanding.³³ Retirement benefits are available to all employees, and several options are available upon retirement for payment of accrued benefit funds.³⁴ Vacation leave is available at a rate based on the employee's number of years of city service.³⁵ Sick leave due to illness of the employee is also available with the number of days being negotiated between the city and the employee's group and memorialized in the Memorandum of Understanding. Sick leave is also available for the employee to care for an ill family member, as that term is defined by ordinance.³⁶ Finally, bereavement leave is offered for the death of a family member, as defined by ordinance.³⁷

With these basic benefits available to all city employees, the quality, and in some cases, the quantity, of benefits, may be directly related to the employee's marital status. In the area of health benefits, for example, the subsidy negotiated by the city is generally intended to cover the cost of the monthly premium for the lowest cost health care plan for the employee, spouse, and one dependent.³⁸ The total benefit subsidy negotiated, therefore, is considered part of each employee's total compensation package, but not every employee receives the full benefit. In

1986, for example, a city employee who was a member of the clerical unit, received a maximum monthly subsidy for health care of \$253.00.³⁹ If the employee were to elect the Kaiser program, this subsidy would have been sufficient to insure the employee, the employee's spouse, and one dependent child.⁴⁰ A single employee electing Kaiser coverage, however, would not have received any monetary reimbursement for the unexpended part of the subsidy which, in this example, would total more than \$160.00. From this one example, it appears clear that single employees are not treated fairly by the benefit plan.

In addition to treating single employees differently than married employees, employees with domestic partners also receive fewer benefits than married employees. While an employee may have his or her spouse covered free of charge on the basic health plan, not so for domestic partners. An employee may take sick leave to care for a needy spouse, but not for an ailing domestic partner.⁴¹ An employee is entitled to bereavement leave upon the death of a spouse, but not when his or her domestic partner dies.⁴² Also, an employee may elect to have survivor benefits paid to a spouse from the employee's retirement fund after the employee's death, but survivor benefits are not available to a surviving domestic partner.⁴³

Meeting Employees' Needs. Single workers and employees with domestic partners are not being compensated fairly under the current employee benefits plan. The needs of dual-income married couples are not being met either. For example, a city employee with a working spouse will not apply for spousal medical coverage if the spouse has medical coverage through his or her own employer. Many of these workers would prefer a flexible benefits plan that would allow substitution of a needed and usable benefit, such as dependent care, for an unusable one.

In addition to increased demand for child care services, employees are beginning to ask for dependent care for aging parents. In fact, employees who must become elder-caregivers may soon outnumber those who care for dependent children.⁴⁴ Adult children provide 80% of the health and social services needed by their aging parents, and the great majority of these caregivers are women.⁴⁵ Recent studies reveal work-related problems with those workers who care for elders, such as lateness, absenteeism, excessive personal phone use, and excessive stress.⁴⁶

Other employee problems and concerns run the gamut from substance abuse, marital problems, and financial stress, to mid-life crisis. These problems are manifested in such forms as depression, anger, anxiety, sleeplessness and exhaustion. The result can be costly to the employee in terms of physical and mental well-being, and to the employer in terms of lost time and impaired work performance.

As an employer with a commitment to the well-being of its employees, as exemplified by programs such as the annual "Wellness Fair," the City of Los Angeles should develop more Employee Assistance Programs to help employees during times of personal or family crises. The Task Force recommends that the city contract with an outside agency to establish programs that would provide employees with confidential counseling on a variety of matters, including substance abuse, relationship problems, retirement planning, financial investing, and dependent care.

Solutions and Recommendations. The city has recognized that its benefits programs need to be revised. Last year, the City Council

hired a consulting firm to assess the feasibility of adopting a flexible or "cafeteria style" benefits program.⁴⁷ A survey of city workers showed that two-thirds wanted the city to adopt such a flexible benefits program.⁴⁸

A flexible benefits plan (also known as "cafeteria" plan) would allow employees more choice in which benefits they receive, such as health insurance, dental insurance, life insurance, dependent life insurance, accidental death and dismemberment insurance, long term disability insurance, child care, elder care subsidy, vision insurance, group auto insurance, savings plan contributions, and cash.

There are three basic types of cafeteria plans. The first, the modular design, presents employees with a choice of several preselected benefits packages. The second, or flexible spending account, gives the employee a choice between taxable cash and pretax payment of nontaxable expenses. The third, or "core-plus" options plan, allows employees to select among various options which complement a fixed core of benefits for all employees.

Whatever type of plan is selected, these benefits plans are beneficial to employees only if the plan chosen meets the employee's particular needs. The Task Force on Family Diversity recommends that the City Council give approval to the Personnel Department to move forward with the implementation phase of the proposed flexible benefits program. The Task Force further recommends that the City Council resolve to eliminate marital status discrimination in the distribution of benefits pursuant to its benefits programs.

Since the issues of child care and elder care pose similar problems for employees, the Task Force recommends that any plan extending child care benefits to employees be expanded to include elder care, in essence, making both "dependent care" benefits.

The city should also take a more active role in the development and implementation of dependent care programs. The city could use its internal systems of communication to disseminate medical findings, estate planning information, and other information relating to aging and the care of elders. Workshops could be provided and support groups formed to help employees deal with elder care. The city might also develop a regionwide network of resources and referral services to provide caregivers with information about available child care and elder care centers and encourage employees to make use of these services.

The Task Force on Family Diversity recommends that the Mayor issue an executive order directing the Personnel Department to review current city personnel practices and authorizing it to take whatever steps are necessary, including meeting and conferring with employee groups, to modify and enhance the city's role as a model employer in the area of dependent care, flexible work schedules, expanded maternity and paternity leave, and the use of leaves to care for elderly dependent relatives. Additionally, the Mayor should direct Project Restore, which is presently working to restore City Hall, to study the feasibility of including an on-site dependent care center in its restoration plans.

Unfairness to Domestic Partners. The facts are in, and the city should recognize that a significant number of its employees are living in domestic partnerships, be they same-sex or opposite-sex relationships. The Task Force on Family Diversity estimates that about 8% of the city's civilian employees have domestic partners.⁴⁹ The Task Force finds that

these employees are being treated unfairly under the present benefits system.

In recent years, several municipalities have extended benefits to government employees and their domestic partners.⁵⁰ In other cities, such proposals are under consideration.⁵¹ The City of Los Angeles should now take positive action on the domestic partnership benefits issue.

Some unfairness would be eliminated if the city were to adopt a flexible benefits plan that does not discriminate on the basis of marital status in the extension of benefits. Other inequities to domestic partners should also be remedied immediately.

For example, it is patently wrong to deny an employee either family sick leave or bereavement leave when his or her domestic partner is seriously ill or dies. Presently, the City Administrative Code does just that.⁵² To implement reform in the area of family sick leave and bereavement leave in a responsible manner, the city must first define the term "domestic partners." The Task Force on Family Diversity recommends that the City Council amend the City Administrative Code to include the term "domestic partner" in the list of "immediate family" relationships for which an employee is entitled to take family sick leave and bereavement leave. The following definition of "domestic partner" should be adopted, and the city's Personnel Department should be authorized to establish appropriate procedures to verify the domestic partnership status of employees who claim eligibility for sick leave or bereavement leave.⁵³

Domestic partners are two persons who declare that:

- (1) They currently reside in the same household, and have been so residing for the previous 12 months.
- (2) They share the common necessities of life.
- (3) They have a mutual obligation of support, and are each other's sole domestic partner.
- (4) They are both over 18 years of age and are competent to contract.
- (5) Neither partner is married.
- (6) Neither partner is related by blood to the other.
- (7) They agree to notify the appropriate agency within 30 days if any of the above facts change.

The extension of family sick leave and bereavement leave to employees who have domestic partners does not require complex legal analysis or extensive fiscal debate. Legally, the city has the discretion to grant such benefits, and the financial impact to the city would be negligible.⁵⁴

Granting retirement benefits to surviving domestic partners has a potentially greater financial impact and more complex legal considerations. Before any proposals move forward in this area, the Government Operations Committee of the City Council could request the City Attorney for a legal analysis and the City Administrative Officer for a financial review of the matter.

City Departments and Commissions

During the past fiscal year, the City of Los Angeles reported nearly \$2.5 billion in revenues. Almost \$2 billion of this revenue was appropriated to city departments.⁵⁵ A list of some departments and a brief summary of their authority shows how departmental services and programs affect local families:⁵⁶

- * **Department of Aging:** plans, coordinates, and manages the city's senior citizen activities.
- * **Building and Safety Department:** enforces all ordinances and laws related to the construction or alteration of homes, apartments, and other buildings, as well as the installation, use and repair of appliances therein; enforces zoning laws.
- * **City Attorney:** prosecutes all misdemeanor cases, including family violence and abuse, and some substance abuse.
- * **Community Development Department:** administers the housing and community block grant, community services block grant, and rent control programs.
- * **Cultural Affairs Department:** sponsors exhibitions and community art events; conducts youth and adult choruses and community sings; sponsors band concerts.
- * **Fire Department:** enforces fire prevention laws; implements a fire prevention program; provides rescue services; extinguishes fires.
- * **City Planning Department:** regulates the use of privately owned property through zoning laws; provides advice and assistance relative to environmental matters.
- * **Police Department:** engages in patrol and prevention of crime; investigates crimes and makes arrests.
- * **Public Works Department:** collects and disposes of household refuse; maintains all sanitation sewers and storm drains; maintains street lighting; maintains streets and sidewalks.
- * **Transportation Department:** develops plans to meet the ground transportation needs of the public; studies parking and traffic problems; controls traffic and pedestrian movement at all intersections; oversees crossing guard services.
- * **Library Department:** purchases, catalogues, maintains, and circulates library materials; provides services at 63 libraries and throughout the city by bookmobiles.
- * **Recreation and Parks Department:** operates parks, beaches, zoo, observatory, travel town, and cultural sites; operates sports, camping, and other recreational programs for youth, seniors, families and individuals.

The responsibility of governing and administering the City of Los Angeles is shared among various participants.⁵⁷ Elected officials write laws, set policies, adopt budgets, and hold occasional oversight hearings. Daily implementation of city services and programs is the duty of department heads. Ideally, however, ongoing oversight of government operations should be attended to by appointed city commissioners.

More than 200 appointed commissioners serve on about 45 boards and commissions created by city charter or ordinance. Most of the appointments are made by the Mayor, with approval by the City Council. Although many commissions exercise authority that has a direct or indirect effect on local families, the Task Force has taken a special interest in the work of the following panels:

* **Commission on the Status of Women:** promotes the general welfare of women in the community and in the city workforce.⁵⁸

* **Human Relations Commission:** promotes intergroup harmony through public hearings, research, education or by recommending legislation or programs.⁵⁹

* **Handicapped Access Appeals Commission:** receives complaints, holds hearings, and makes rulings on buildings lacking access for people with disabilities.⁶⁰

* **Board of Public Works:** issues permits for filming by media on city-owned property; enforces laws prohibiting nondiscrimination by city contractors.

The Task Force commends the city's Commission on the Status of Women for its efforts to improve the quality of life for women and families in Los Angeles. The Commission has developed and the City Council has approved an excellent "Policy Statement on Women's Issues," to guide the city's legislative programs in Sacramento and Washington, D.C.⁶¹ The Task Force also commends the Women's Commission for its leadership in promoting the extension of family benefits to domestic partners.

The Task Force is aware that the city's Human Relations Commission annually prints and distributes a calendar noting various holidays and observances of interest to constituencies in this multicultural city. The Task Force commends the Commission for choosing "Family Diversity" as the theme for its 1988 Human Relations Calendar. Having studied various aspects of the Commission's operations, the Task Force suggest several modifications in the Commission's operations. In keeping with the Commission's mandate to propose legislation and programs promoting intergroup harmony, the Task Force recommends that the Human Relations Commission develop and annually update a "Policy Statement on Human Relations" for inclusion in the city's legislative policy statements. The Task Force also recommends that the Commission take whatever steps are necessary to insure that its Annual Report is filed with the Mayor and distributed to interested parties in a timely manner. Finally, the Task Force recommends that the Human Relations Commission adopt a plan of action to revitalize its operations. A consultant might be hired to assist the Mayor and the Commission in facilitating such a revitalization program.

The Handicapped Access Appeals Commission was created last year. It will doubtless build upon and augment the work of the Mayor's Advisory Commission on Disabilities. The Task Force commends the

Mayor and the City Council for elevating the access issue to full commission status. The Task Force recommends that the Mayor review the needs of the Advisory Commission on Disabilities, including its budget and staffing, so that it can deal effectively with numerous disability issues that do not fall within the jurisdiction of the newly created Access Appeals Commission. As mentioned elsewhere in this report, the Task Force also recommends that as soon as possible, the mayor's Advisory Commission be replaced by a commission on disabilities created by ordinance.

The Board of Public Works plays an important role in administering the city and state nondiscrimination laws. Equal opportunity is an important issue in a city with so many minorities and constituencies. The city recently affirmed its commitment to nondiscrimination when it passed an ordinance prohibiting discriminatory membership practices by certain private clubs.⁶²

Years ago, the city resolved not to award city funds to vendors or contractors who engage in discriminatory employment practices that violate federal, state, or local nondiscrimination laws. This ordinance is administered by the Board of Public Works. Under the ordinance, as amended in 1975, funds may not be awarded to contractors who discriminate on the basis of race, religion, national origin, ancestry, sex, age, or physical handicap.⁶³ Although other forms of discrimination have been prohibited in subsequent years, the ordinance has remained the same since 1975. Now, however, discrimination on the basis of "medical condition," "marital status," and "sexual orientation" is illegal under state or local laws.⁶⁴ If the city "intends to deal only with those contractors who comply with the nondiscriminatory . . . provisions of the laws of United States of America, the State of California, and the City of Los Angeles,"⁶⁵ then the Administrative Code should be updated. The Task Force recommends that the City Council amend the Administrative Code provisions dealing with nondiscrimination by city contractors, adding "marital status," "sexual orientation," and "medical condition" to appropriate subdivisions of Section 10.8, Division 10, Chapter 1 of that code. The Task Force also recommends that the City Attorney and the Board of Public Works keep the City Council and the Mayor apprised of any additional categories that should be added if state, federal, or local nondiscrimination laws are augmented in the future.

In addition to its specific comments on these four commissions, the Task Force offers a few additional observations about the commission process in general. With varying degrees of authority, city boards and commissions oversee departmental operations. Some have the authority to approve or reject departmental policies. Others serve in a more limited advisory capacity. Some have substantial budgets and adequate staffing. Others are significantly underbudgeted and understaffed. Most commissioners serve without compensation, receiving token "per diems" to cover expenses in attending meetings.

One critical observer recently suggested the attributes of effective commissions, which she called, "the lifeblood of our government."⁶⁶ The City of Los Angeles would benefit by employing the following criteria in any evaluation of the commission system which might be undertaken in the future:⁶⁷

* The process of selecting commissioners should be open, with broad based recruitment efforts.

* Appointees should be selected for their integrity and ability; not for purely political reasons.

* A limit of two terms should be the rule. With so many qualified people to choose from, more individuals should be given an opportunity to serve.

* Commissioners should listen to conscientious staff members, should not be puppets of department heads, and should exert independent effort to find out what is really going on within their jurisdiction.

* Commissioners should be visible in the community, thus encouraging broad citizen participation.

* Commissions should be adequately budgeted and have adequate and competent staffing.

* To determine whether a given commission is doing its job, annual reports should be required.

With these criteria in mind, the Task Force on Family Diversity recommends that the Mayor and the City Council conduct a thorough review of the city's commission process for the purpose of making the commissions more representative and effective. The Task Force notes that some constituencies are underrepresented.⁶⁸ It is recommended that the Mayor review the representativeness of current city commissioners and correct any gross imbalances with the next set of scheduled vacancies in June, 1988.

Although this report touches upon many of the major areas of concern to diverse family groups in Los Angeles, the Task Force on Family Diversity is fully aware that many other important areas have not been addressed. It should be apparent that the study of changing family demographics and problems should be an ongoing process for the City of Los Angeles. Unfortunately, there is no existing city agency dealing with family issues on a holistic basis. Los Angeles families deserve more attention, and the City Council, the Mayor, and city departments need ongoing advice related to family concerns. To fulfill this important function, the Task Force on Family Diversity recommends that the City Council and the Mayor establish a Commission on Family Diversity to begin operating in budget year 1989-90. This report, and its background documents, could serve as a foundation for the initial operations of such a commission.

In the interim, the Task Force recommends that the Mayor direct all department managers and all commission presidents to review the report of the Task Force on Family Diversity so that they are aware of current family demographics and needs and can therefore continue to improve policies, programs and services affecting local families.

CITY GOVERNMENT: RECOMMENDATIONS

Employee Benefits

98. The Task Force recommends that the City Council and the Mayor continue to press Congress, the California Legislature and the Industrial Welfare Commission to increase the minimum wage for all workers to \$5.01 per hour in 1989.

99. The Task Force recommends that the City Council adopt the child support payment deduction program that has been proposed by Councilwoman Ruth Galanter and Controller Rick Tuttle.

100. The Task Force recommends that the City Council give approval to the Personnel Department to move forward with the implementation phase of the proposed flexible benefits program. The Task Force also recommends that the City Council resolve to eliminate marital status discrimination in the distribution of benefits pursuant to its benefits programs.

101. The Task Force recommends that any plan extending child care benefits to employees should be expanded to include elder care, in essence, making both "dependent care" benefits.

102. The Task Force recommends that the Mayor issue an executive order directing the Personnel Department to review current city personnel practices and authorizing it to take whatever steps are necessary, including meeting and conferring with employee groups, to modify and enhance the city's role as a model employer in the area of dependent care, flexible work schedules, expanded maternity and paternity leave, and the use of leaves to care for elderly dependent relatives. Additionally, the Mayor should direct Project Restore, which is presently working to restore City Hall, to study the feasibility of including an on-site dependent care center in its restoration plans.

103. The Task Force recommends that the city contract with an outside agency to establish an Employee Assistance Program that would provide employees with confidential counseling on a variety of matters, including substance abuse, relationship problems, retirement planning, financial investing, and dependent care.

104. The Task Force recommends that the City Council amend the City Administrative Code to include the term "domestic partner" in the list of "immediate family" relationships for which an employee is entitled to take family sick leave and bereavement leave. The following definition of "domestic partner" should be adopted, and the city's Personnel Department should be authorized to establish appropriate procedures to verify the domestic partnership status of employees who claim eligibility for sick leave or bereavement leave:

Domestic partners are two persons who declare that:

- (1) They currently reside in the same household, and have been so residing for the previous 12 months.
- (2) They share the common necessities of life.
- (3) They have a mutual obligation of support, and are each other's sole domestic partner.
- (4) They are both over 18 years of age and are competent to contract.
- (5) Neither partner is married.
- (6) Neither partner is related by blood to the other.
- (7) They agree to notify the appropriate agency within 30 days if any of the above facts change.

Departments and Commissions

105. The Task Force recommends that the following actions be taken in connection with the city's Human Relations Commission:

(a) In keeping with the Commission's mandate to propose legislation and programs promoting intergroup harmony, the Commission should develop and annually update a "Policy Statement on Human Relations" for inclusion in the city's legislative policy statements.

(b) The Commission should take whatever administrative action is necessary to insure that its Annual Report is filed with the Mayor and distributed to interested parties in a timely manner.

(c) The Commission should adopt a plan of action of revitalize its operations. A consultant might be hired to assist the Mayor and the Commission in facilitating such a revitalization program.

106. The Task Force recommends that the Mayor review the needs of the Advisory Commission on Disabilities. Pending the creation by ordinance of a full Commission on Disabilities, the Advisory Commission needs a budget and staff members of its own so that it can effectively deal with numerous disability issues which do not fall within the jurisdiction of the newly created Access Appeals Commission.

107. The Task Force recommends that the City Council amend the Administrative Code provisions dealing with nondiscrimination by city contractors, adding "marital status," "sexual orientation," and "medical condition" to appropriate subdivisions of Section 10.8, Division 10, Chapter 1 of that code. It is further recommended that the City Attorney and the Board of Public Works keep the City Council and the Mayor apprised of any additional categories which should be added as state, federal, and local nondiscrimination laws may be augmented in the future.

108. The Task Force recommends that the Mayor and the City Council conduct a thorough review of the appointment process and operations of the city's commissions, for the purpose of making the commissions more representative and effective.

109. The Task Force recommends that the City Council and the Mayor establish a Commission on Family Diversity to begin operating in budget year 1989-90. This report, and its background documents, will serve as a foundation for the initial operations of a Family Diversity Commission.

110. The Task Force recommends that the Mayor direct all department managers and all commission presidents to review the report of the Task Force on Family Diversity so that they are aware of current family demographics and needs and therefore can improve policies, programs and services affecting local families.

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¹⁶ *Ibid.*; The number of employees with domestic partners may be somewhat higher than 5%. A recent survey by the Commission on the Status of Women estimated that 11% of city employees lived with domestic partners. The actual number probably lies between these two figures.

¹⁷ *Ibid.*

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- ²⁶ *Id.*, p. 11.
- ²⁷ Willborn, Steven L., *A Comparable Worth Primer* (Lexington Books, 1986).
- ²⁸ *Id.*, p. 7.
- ²⁹ Berne, Suzanne, "Elder Care: *The Issue of the 21st Century*," *Los Angeles Downtown News*, Vol. 16, No. 35 (August 24, 1987).
- ³⁰ In a survey of the city's workforce conducted last year by the Los Angeles Commission on the Status of Women, 11% of about 6,000 respondents reported that they lived with a domestic partner.
- ³¹ Willborn, *supra*, note 27, at p. 10.
- ³² Klein, *supra*, note 25, at pp. 11-12.
- ³³ *Health and Dental Care Program*, Employee Benefits Office, Personnel Department, September 1, 1986, pp. 1, 22.
- ³⁴ City Charter, Section 509.
- ³⁵ Los Angeles Administrative Code, Section 4.245.
- ³⁶ Los Angeles Administrative Code, Section 4.127.
- ³⁷ Los Angeles Administrative Code, Section 4.127.1.
- ³⁸ *Health and Dental Care Program*, *supra*, note 33, at pp. 19, 22.
- ³⁹ *Id.*, pp. 21-22.
- ⁴⁰ *Id.*, p. 19.
- ⁴¹ Los Angeles Administrative Code, Section 4.127.
- ⁴² Los Angeles Administrative Code, Section 4.127.1.
- ⁴³ City Charter, Section 508.2.
- ⁴⁴ Berne, *supra*, note 29.
- ⁴⁵ Jackson, Dennis, "Dependent Care in the City of Los Angeles," Los Angeles City Department of Aging.
- ⁴⁶ Friedman, Dana, "Eldercare: The Employee Benefit of the 1990s," *Across the Board*, p. 46 (June, 1986).
- ⁴⁷ Testimony of Charles Harris, *supra*, note 19.
- ⁴⁸ Comrie, *supra*, note 15.
- ⁴⁹ The survey by the Personnel Department estimated about 5%; the Women's Commission survey estimated about 11%. The Task Force estimate of 8% is the average of these two figures.
- ⁵⁰ See previous chapter on Domestic Partnership Families.
- ⁵¹ *Ibid.*
- ⁵² Los Angeles Administrative Code Sections 4.127 and 4.127.1.
- ⁵³ Ross, *supra*, note 18; Link, *supra*, note 18.
- ⁵⁴ Hurd, *supra*, note 1.
- ⁵⁵ "Budget for the City of Los Angeles for Fiscal Year 1987-88," as proposed by Mayor Tom Bradley.
- ⁵⁶ *Ibid.*
- ⁵⁷ Harris, Ellen, "Government's Lifeblood: Commissions with Clout," *Los Angeles Times*, August 16, 1987.
- ⁵⁸ "Detail of Departmental Programs with Financial Summaries," Supplement to the 1987-88 Proposed Budget.
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- ⁶⁰ City Council File No. C.F. 86-1757; "Access Panel for Disabled," *Los Angeles Times*, October 6, 1987.
- ⁶¹ "1987-88 Legislative Policy Statements," prepared by the Chief Legislative Analyst.
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- ⁶³ Los Angeles Municipal Code, Div. 10, Ch. 1, Art. I, Section 10.8.2.
- ⁶⁴ Government Code Section 12940; Labor Code Sections 1101, 1102; 69 *Cal.AttyGen.Op.* 80 (1986); Los Angeles Municipal Code Section 49.70, et seq.
- ⁶⁵ Los Angeles Municipal Code, Div. 10, ch. 1, Art. I, Section 10.8.
- ⁶⁶ Harris, *supra*, note 3.
- ⁶⁷ *Ibid.*
- ⁶⁸ The Task Force is not advocating a rigid quota system in the

appointment process. However, it has come to the attention of the Task Force that there are only four known gay or lesbian commissioners and only a handful of disabled commissioners presently serving on boards and commissions created by charter or ordinance. Each of these constituencies constitute from 10 to 15 percent of the local population. This imbalance could be corrected when the Mayor and the City Council fill vacancies scheduled for June, 1988.

TASK FORCE ON FAMILY DIVERSITY

City of Los Angeles

SUPPLEMENT

(Part One)

REPORTS OF RESEARCH TEAMS

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LOS ANGELES CITY TASK FORCE ON FAMILY DIVERSITY
RESEARCH TEAM ON INSURANCE DISCRIMINATION

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May 20, 1987

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I INTRODUCTION

While many forms of discrimination which are alleged to be engaged in by the insurance industry were suggested for study by various members of the Task Force, the team members concluded that the scope of their inquiry should be limited by the mandate of the Task Force which is to focus on issues of family diversity. As such, although worthy of study, topics such as "redlining," and the effect that the skyrocketing of insurance rates has on the availability of affordable and quality childcare services in the City of Los Angeles, are not the subject of this report.

Given the Task Force's mandate that "family is a broad and expansive concept, capable of encompassing a wide range of committed relationships" and that "government itself should not foster discrimination against families nor should it tolerate unfair private discrimination against families," it was decided to focus this report on discrimination against the non-traditional family unit by the insurance industry. While a non-traditional family unit may include a variety of "committed relationships," this report is further focused on what is commonly referred to as "lifestyle" discrimination. Lifestyle discrimination, for purposes of this paper, means discrimination against a domestic partnership, other than a married couple. This could include gay and lesbian couples and heterosexual couples living together but unmarried. The terms lifestyle discrimination and discrimination against the non-traditional family unit are used interchangeably in this report.

In order to prepare this report, testimony was taken at the public hearings conducted by the Task Force. Those who testified included Leonard Graff, Legal Director of the National Gay Rights Advocates, who addressed the topic of illegal practices and legal recourse which is presently available to combat lifestyle discrimination. Also testifying was Tonia Melia, President of the National Business Insurance Agency, who addressed the topic of lifestyle discrimination in homeowners, renters, automobile and business insurance. Lastly, Brendt O. Nance, President of Concerned Insurance Professionals for Human Rights, addressed the topic of lifestyle discrimination in life, health and disability insurance policies. A representative from the State Insurance Commissioner's Office, although invited to the public hearings, could not attend. In any event, information regarding that office's handling of lifestyle discrimination complaints was provided to this team by Special Consultant to the Task Force, Thomas F. Coleman, who spoke with representatives from that office regarding lifestyle discrimination. Additionally, team

member, Jeff Vopal, though his contacts in the insurance business, collected a variety of complaints alleging lifestyle discrimination.

Lastly, it should be acknowledged that University of Southern California Law Center Student, Ida Kan, provided the team with legal research and a report which was of assistance to the team in preparing this paper. Her assistance was greatly appreciated.

Below, this team will set forth a summary of its recommendations, a summary of its findings regarding lifestyle discrimination, a summary of the laws which might be utilized to combat lifestyle discrimination, and its recommendations.

II SUMMARY OF RECOMMENDATIONS

1. IT IS RECOMMENDED that the City Attorney carefully evaluate the possibility of using the Unruh Civil Rights Act and/or Business and Professions Code section 17200 et seq. to combat lifestyle discrimination in insurance opportunities.
2. IT IS RECOMMENDED that the City Attorney seek to establish a cooperative relationship with the State Insurance Commissioner for the referral to the City Attorney's Office of complaints lodged with the Commissioner by Los Angeles residents wherein discrimination on the basis of lifestyle is alleged.
3. IT IS RECOMMENDED that the City Attorney seek to establish a cooperative relationship with both the Attorney General's Office and the Los Angeles County District Attorney's Office for the exchange of information regarding complaints of lifestyle discrimination by the insurance industry which are lodged with each agency.
4. IT IS RECOMMENDED that the City Attorney seek to establish a cooperative relationship with the Department of Fair Employment and Housing for the exchange of information regarding alleged instances of lifestyle discrimination by those engaged in the insurance business in the City of Los Angeles.
5. IT IS RECOMMENDED that the City Attorney seek to establish working arrangements with local civil rights organizations to exchange information regarding complaints of lifestyle discrimination by the insurance industry

6. IT IS RECOMMENDED that if the City Attorney concludes, after a careful analysis of applicable law, that the issue of lifestyle discrimination in insurance opportunities can be addressed through the Unruh Civil Rights Act and/or Business and Professions Code section 17200 et seq., and the City Attorney finds that a person or entity in the insurance business is engaging in a pattern or practice of unlawful discrimination against insureds or applicants for insurance on the basis of lifestyle, that he or she bring an action against that person or entity for violation of the Unruh Civil Rights Act and/or an action for unfair business practices under California Business and Professions Code section 17200 et seq.

III DISCRIMINATION BY THE INSURANCE INDUSTRY AGAINST THE NON-TRADITIONAL FAMILY UNIT OR LIFESTYLE DISCRIMINATION

Several witnesses testified at the Task Force's public hearings that insurance companies do engage in lifestyle discrimination.

For example, in his public hearing testimony, Tony Melia, President of National Business Insurance Agency (NBIA), told the Task Force of lifestyle discrimination by insurance companies in property and casualty insurance.^{1/} In the area of homeowners coverage, some companies are refusing to issue one joint policy in the names of both same-sex householders, as their interests may appear, even though joint policies are issued routinely to married couples. When it comes to automobile insurance, most companies will not offer a family discount to an unmarried couple who live together and share cars, even though such discounts are offered to blood relatives or married couples. Some companies are discreet in the way they discriminate. Others are more blatant. One company wrote to NBIA and complained that the agency was writing too many policies for unmarried persons.

Additionally, Brendt Nance, President of Concerned Insurance Professionals for Human Rights, documented lifestyle discrimination in health, life, and disability

^{1/} Public Hearing Transcript, p. 189.

insurance.^{2/} In the area of life insurance, he reported that some companies refuse to issue a policy if the consumer names a beneficiary who is not related by blood, marriage, or adoption. When it comes to health insurance, he gave an example of marital status discrimination in rate setting. He said that one major carrier charges two unmarried 35-year-olds a total of \$213.60 per month for basic coverage, while a married couple can purchase the same coverage for \$197 per month.

Lastly, Leonard Graff, Legal Director for National Gay Rights Advocates (NGRA), recounted numerous cases of lifestyle discrimination against gays and lesbians.^{3/} He told how NGRA has received complaints concerning automobile insurance, homeowner and renter policies, umbrella or excess liability policies, and health insurance. Some of the complaints have to do with outright denial of coverage, others have to do with the naming of beneficiaries, but most pertain to rate discrimination against unmarried couples.

Mr. Graff explained how NGRA was able to convince the Automobile Club of Southern California to extend family discounts for automobile insurance coverage to unmarried couples. Previously, the discount was available only to married couples. Some companies have followed AAA's example, but others persist in extending family discounts only to married couples. However, the AAA reform only applies to insurance and not to membership in the Auto Club. The Automobile Club of Southern California continues to maintain membership discount practices which discriminate against unmarried couples. A married couple gets preferred pricing, with one master membership and a discounted associate membership. An unmarried couple, on the other hand, must pay for two master memberships. The issue of discrimination was raised last year at AAA's annual membership meeting. Members complained that preferred discount rates for married couples

^{2/} Public Hearing Transcript, p. 196.

^{3/} Public Hearing Transcript, p. 114.

violated state and local laws against marital status and sexual orientation discrimination by business establishments in the City of Los Angeles. In view of changing demographics and family structures in Southern California, the Auto Club created an internal AAA Task Force to review membership rating practices and to recommend possible revisions to the Board of Directors.

Lifestyle discrimination also occurs in the area of renter's insurance. Renter insurance protects occupants of an apartment of house against property damage or liability. Most insurance companies will not issue one policy to an unmarried couple renting an apartment. They require two policies, which, of course, requires the payment of two premiums. A married couple, however, can save money by obtaining a joint policy.

According to NGRA, in the area of homeowner, renter, and automobile insurance, lifestyle discrimination does not usually involve outright denial of coverage--rather, it involves the setting of higher rates for unmarried couples than married couples. In other words, lifestyle discrimination is primarily rate discrimination on the basis of marital status or sexual orientation.

IV RECOMMENDATIONS CONCERNING WHAT THE CITY OF LOS ANGELES CAN DO TO CURB DISCRIMINATION AGAINST THE NON-TRADITIONAL FAMILY UNIT BY THE INSURANCE INDUSTRY

A. Current Regulatory Practices and Existing Law

Before making recommendations as to what the City of Los Angeles might be able to do to curb discriminatory practices engaged in by the insurance industry against the non-traditional family unit, current regulatory practices and existing law should be examined in order to determine whether the City can use existing law to participate in the identification and prosecution of such unlawful discrimination.

While at first glance the issue of discrimination by those engaged in the insurance business in this state is a matter for statewide rather than local concern, as will be set forth below, existing law may provide methods by which local entities, who seek to protect their residents from such unlawful and discriminatory practices, can address the issue.

The State Insurance Commissioner

The State Insurance Commissioner and the State Department of Insurance (hereinafter collectively referred to as the

"Commissioner") are primarily responsible for the regulation of those engaged in the insurance business in this state. As such, it is appropriate that this paper examine the Commissioner's authority to take action against those who engage in lifestyle discrimination against applicants for insurance and/or insureds.

Pursuant to Insurance Code section 12921.3 any person may file a written complaint with the Commissioner concerning the "handling of insurance claims by insurers" or "the alleged misconduct by insurers or production agencies." The Commissioner is required to investigate such complainants, to acknowledge receipt of such complaints in writing, may seek to mediate complaints, and is required to notify the complainant of the final action to be taken on his or her complaint. (Ins. Code §§ 12921.3 and 12921.4(a).) Moreover, the Insurance Commissioner is required to "ascertain patterns of complaints and periodically evaluate the complaint patterns to determine what additional audit, investigative, or enforcement actions which may be taken by the Commissioner" (Ins. Code § 12921.4(b).) Can a victim of lifestyle discrimination file a complaint with the Commissioner under the above-described statutory scheme? The answer to this question would appear to be Yes.

Insurance Code section 790 et. seq. provides for remedies available through the Commissioner for unfair practices engaged in by those in the business of insurance. (Ins. Code §§ 790.01-790.02.) Included in the unfair practices prohibited by this statutory scheme is discrimination on the basis of marital status and sexual orientation. Title 10, California Administrative Code section 2560.3, a regulation promulgated by the Commissioner pursuant to Insurance Code section 790.10, provides in relevant part:

"No person or entity engaged in the business of insurance in this State shall refuse to issue any contract of insurance or shall cancel or decline to renew such contract because of the sex, marital status or sexual orientation of the insured or prospective insured."^{4/}

^{4/} A copy of this regulation is Appendix 1 to this paper.

The Commissioner has the power to conduct investigations of alleged unfair practices, including those prohibited by regulation section 2560.3 (Ins. Code § 790.04), and, where appropriate, may commence an administrative action against the alleged violator. (Ins. Code § 790.06.) If, after an administrative hearing, the Commissioner determines that a violation has occurred, he or she may issue a written report so declaring. (Ins. Code § 790.06(a).) If the person or entity does not thereafter cease from engaging in the unfair practice, then the Commissioner, through the State Attorney General, may seek a court order restraining the person or entity from continuing to engage in such practice. (Ins. Code § 790.06(b).) A recalcitrant person or entity who defies a court order which enjoins the unfair practice, in addition to a contempt proceeding, faces fines and possible suspension of his, her or its license or certificate to engage in the insurance business. (Ins. Code § 790.07.)

From the foregoing it would appear, therefore, that the Insurance Commissioner may address instances of lifestyle discrimination brought to his or her attention through the complaint procedure authorized by Insurance Code sections 12921.3-12921.4 for violation of Insurance Code section 790 et seq. and Regulation section 2560.3. However, testimony presented to this Task Force indicates that Regulation section 2560.3 is currently interpreted by the Commissioner to provide protection against lifestyle discrimination only insofar as coverage is denied on such basis, but not insofar as a person is charged a higher rate for coverage because of the lifestyle in which he or she is engaged.^{5/} (See testimony of Leonard Graff before Task Force on February 6, 1987 at page ____.) Accordingly, to the extent that lifestyle discrimination exists with respect to the rates charged by insurers, the Insurance Commissioner apparently does not currently provide any relief.

^{5/} The correctness of this interpretation of Regulation section 2560.3 is not challenged herein as the interpretation of a regulation by the agency charged with its enforcement is entitled to great weight. (Judson Steel Corp. v. Workers Comp. Appeals Bd. (1978) 22 Cal.3d 658, 668 and Gay Law Students Assn. v. Pacific Tel. & Tel. Co. (1979) 24 Cal.3d 458, 491.)

The Unruh Civil Rights Act

The Unruh Civil Rights Act, California Civil Code section 51, as will be discussed below, may provide a mechanism for the eradication of lifestyle discrimination which may not be addressed by the Insurance Commissioner. Civil Code section 51 states in relevant part:

"All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, or national origin are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever."

The Unruh Act bars all forms of arbitrary discrimination, and those protected by the Act are not limited to members of the classes which are specifically enumerated therein. (In re Cox (1970) 3 Cal.3d 205, 216.) For example discrimination on the basis of sexual orientation, which is not specifically mentioned in the Act, has been held to be covered by the Unruh Act. (Rolon v. Kukwitzky (1984) 153 Cal.App.3d 289.) The Unruh Civil Rights Act is the codification of California's common law doctrine that enterprises affected with a public interest may not discriminate arbitrarily. (In re Cox, supra, 3 Cal.3d 205, 212.)

The phrase "all business establishments of every kind whatsoever" in Civil Code section 51 has also been expansively and liberally construed. (See for e.g., O'Connor v. Village Green Owners Assn. (1983) 33 Cal.3d 790, 793-794 and Marina Point Ltd. v. Wolfson (1982) 30 Cal.3d 721, 731.)

In Burks v. Poppy Construction Co. (1962) 57 Cal.2d 463, 468-469, the Supreme Court stated:

"The Legislature used the words "all" and "of every kind whatsoever" in referring to business establishments covered by the Unruh Act (Civ. code, § 51, and the inclusion of these words, without any exception and without specification of particular kinds of enterprises, leaves no doubt that the term "business establishments" was used in the broadest sense reasonably possible. The word "business" embraces everything about which one can be employed, and it is often synonymous with "calling, occupation, or trade, engaged in for the purpose of making a livelihood or gain." (See Mansfield v. Hyde, 112 Cal.App.2d 133, 137 [245 p.2d 577]; 5 Words and Phrases (perm. ed. 1940) p. 970 et seq.) The word "establishment," as broadly defined, includes not only a fixed location,

such as the "place where one is permanently fixed for residence or business," but also a permanent "commercial force or business;" but also a permanent "commercial force or organization" or "a permanent settled position (as in life or business:)" (See Webster's New Internat. Dict. (2d ed. 1957) p. 874; id. (3d ed. 1961) p. 778.)'"

Factors such as the number of persons employed, physical facilities maintained, fees charged, advertising solicited or sold, collection of royalties, and the performance of other "customary business functions" may identify an entity or person as a "business establishment" within the meaning of the Unruh Act. (Curran v. Mount Diablo Council of Boy Scouts (1985) 147 Cal.App.3d 712, 730 and Pines v. Tomson (1984) 160 Cal.App.3d 370, 386.) Moreover, the term "business" has been held to include both commercial operations and noncommercial entities which are public accommodations or affected with a public interest or which have businesslike attributes. (Pines v. Tomson (1984) 160 Cal.App.3d 370, 385, 386.) Finally, the Unruh Act not only covers the arbitrary exclusion of persons from a business establishment or service, but with also business practices which result in the unequal treatment of patrons or those who wish to use services provided by a business establishment. (Koire v. Metro Car Wash (1985) 40 Cal.3d 27, 29.)

While no reported case has ever specifically applied the Unruh Act to arbitrary discrimination by any entity or person who is engaged in the insurance business, given the broad and expansive interpretation which has been given the term "all business establishments of any kind whatsoever," the applicability of the Unruh Act to those engaged in the insurance business is almost certain. Moreover, since the Act prohibits all forms of arbitrary discrimination, arbitrary discrimination based upon lifestyle may also be held to be prohibited by the Act. Assuming both of the above issues of first impression would be resolved as indicated above in an action filed by the City Attorney, one major obstacle to successfully prosecuting a case to curb discrimination on the award of lifestyle exists. A "business establishment" may avoid liability under the Unruh Act if it can establish that there are "reasonable department regulations that are rationally related to the services performed and facilities provided," which justify the otherwise discriminatory conduct. (In re Cox (1970) 3 Cal.3d 205, 217 and Marina Point Ltd. v. Wolfson (1982) 30 Cal.3d 721, 737.) This defense would have clear applicability in the case of discrimination in rates charged by insurance companies. As such, in any case brought to curb lifestyle discrimination, a major factual and legal issue would no doubt be whether the particular form of

lifestyle discrimination can be justified under this "reasonable business regulation" defense.

This brings us to the next question. Who is responsible for the enforcement of the Unruh Act? First of all, violations of the Unruh Act can be redressed through a private action brought by the person aggrieved by a discriminatory practice or action. (Civ. Code § 52(a).) Such aggrieved person is entitled to treble his or her actual damages, but in no case less than \$250, and attorney's fees. Injunctive relief is also available.

Second of all, a victim of a practice which violates the Unruh Act can seek redress through the Department of Fair Employment and Housing. Complaints may be filed with the Department (Gov. Code §§ 12948 and 12960-12976.) The Department will then investigate the complaint (Gov. Code §§ 12963), attempt to conciliate the complaint if (Gov. Code § 12963.7), and in its discretion, may institute an administrative action against the offending party. (Gov. Code § 12965.) Such an administrative action, if filed, would be tried before the Fair Employment and Housing Commission which eventually would render a decision in the case and would take "such action . . . [a]s in its judgment . . . would effectuate the purposes of Part 2.8 of Government Code.^{6/}

Lastly, but most importantly for purposes of this paper, the Attorney General, District Attorneys and City Attorneys are authorized to bring injunctive relief actions to enjoin a "pattern or practice" of violating the Unruh Act. (Civ. Code § 52(c).) The extent to which the Unruh Act has been used by the Attorney General, the Los Angeles County District Attorney and the City Attorney, however, to combat discrimination in the insurance industry is unknown.^{7/}

^{6/} Government Code section 12948 which makes a violation of the Unruh Act a violation of the Fair Employment and Housing Act, Government Code section 12900 et seq., is included in Part 2.8.

^{7/} Civil Code section 52(c) authorizes "preventive relief" which includes injunctive relief. The term preventive relief has never been judicially defined. Accordingly, some creativity can be used in formulating the type of relief to be requested when prosecuting patterns or practices of violations of the Unruh Civil Rights Act.

Business and Professions Code Section 17200 et seq.

Business and Professions Code section 17200 et seq. prohibits unfair competition in this state. Unfair competition is defined to include "unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading advertising." (Bus. & Prof. Code § 17200.) This definition, however, is not restrictive. (Athens Lodge No. 70 v. Wilson (1953) 117 Cal.App.2d 322, 325.) The prohibitory reach of this statutory scheme is not limited to deceptive or fraudulent conduct but extends to any unlawful business conduct. (Perdue v. Crocker National Bank (1985) 38 Cal.3d 913, 930 and Children's T.V. Inc. v. General Foods Corp. (1983) 35 Cal.3d 197, 209-210.)

Accordingly, there is potential, to extent that lifestyle discrimination can be termed "unfair" or "unlawful" to bring a civil action against those engaging in lifestyle discrimination for unfair competition under Business and Professions Code section 17200 et seq.

As is the case with the Unruh Civil rights Act, the Attorney General, District Attorneys and City Attorneys may bring an action for injunctive relief to enjoin the act of unfair competition.^{8/} (Bus. & Prof. Code § 17204.) Moreover, the Attorney General, District Attorneys, and City Attorneys may seek civil penalties of no more than \$2,500 for each violation against those who engage in unfair competition. (Bus. & Prof. Code § 17206.)^{9/}

^{8/} City Attorneys from any city having a population over 750,000 have the right to bring these actions. (Bus. & Prof. Code § 17204.)

^{9/} It is important to note that the remedies provided by Business and Professions Code sections 17200 et seq. are cumulative to other remedies provided by law. Accordingly, an Unruh Act claim may be joined with a claim under Business and Professions Code section 17200 et seq. (Bus. & Prof. Code § 17205.)

B. Recommendations

As discussed above, the City Attorney may seek to address the issue of discrimination against the non-traditional family unit by the insurance industry by filing actions under the Unruh Civil Rights Act, Civil Code section 51 and/or Business and Professions Code section 17200 et seq. However, in order to prosecute such cases the City Attorney must first have access to information and evidence which documents such unlawful discrimination. In order that the City Attorney maximize his/or her effectiveness, yet minimize the taxing effect on the resources of the City Attorney's Office, the following recommendations are made with regards to the investigation and prosecution of those engaged in the insurance business who discriminate against the non-traditional family unit:

1. IT IS RECOMMENDED that the City Attorney carefully evaluate the possibility of using the Unruh Civil Rights Act and/or Business and Professions Code section 17200 et seq. to combat lifestyle discrimination in insurance opportunities. The question of whether either of these statutory remedies can be used to combat lifestyle discrimination which is engaged in by the insurance industry encompasses many issues of first impression. As such, a careful and more thorough legal analysis than the one contained in this paper should be done to ensure that these statutes do indeed provide viable remedies.
2. IT IS RECOMMENDED that the City Attorney seek to establish a cooperative relationship with the State Insurance Commissioner for the referral to the City Attorney's Office of complaints lodged with the Commissioner by Los Angeles residents wherein discrimination on the basis of lifestyle is alleged. Pursuant to Insurance Code section 12921.5, the Insurance Commissioner may meet with "persons, organizations and associations interested in insurance for the purpose of securing cooperation in the enforcement of the insurance laws of this state" and "may disseminate information concerning the insurance laws of the State . . ."^{10/}

^{10/} The Commissioner also has the duty to advise the District Attorney of the relevant county when he or she finds that an insurer, its officers, agents or employees are violating any of the penal provisions of the Insurance Code or of "other laws" (Ins. Code sec. 12928).

The City Attorney should request that the Insurance Commissioner exercise his or her powers under this statute and provide the City Attorney with appropriate information.

3. In order for the City Attorney to prosecute an action under the Unruh Civil Rights Act, "a pattern or practice of discrimination" must be established. One way of gathering information regarding patterns or practices of discrimination occurring within the City of Los Angeles would be to exchange information regarding claims of unlawful discrimination engaged in by those in the insurance business with other prosecutorial offices within the Los Angeles with jurisdiction to enforce the Unruh Civil Rights Act. Accordingly,

IT IS RECOMMENDED that the City Attorney seek to establish a cooperative relationship with both the Attorney General's Office and the Los Angeles County District Attorney's Office for the exchange of information regarding complaints of lifestyle discrimination by the insurance industry which are lodged with each agency. The sharing of this information will assist in identification of patterns or practices of discrimination by those engaged in the insurance business within the City of Los Angeles.

4. Pursuant to Government Code sections 12930(f)(2) and 12948 the State Department of Fair Employment and Housing is authorized "to receive investigate, and conciliate complaints alleging a violation of [Unruh Civil Rights Act]." (Gov. Code § 12930(f)(2).) As is the case with the Attorney General and the Los Angeles County District Attorney, the Department may have information concerning alleged lifestyle discrimination by the insurance industry which occurs in the City of Los Angeles. Accordingly, IT IS RECOMMENDED that the City Attorney seek to establish a cooperative relationship with the Department of Fair Employment and Housing for the exchange of information regarding alleged instances of lifestyle discrimination by those engaged in the insurance business in the City of Los Angeles.
5. To further increase the effectiveness of the City Attorney in enforcing the Unruh Civil Rights Act, information must be obtained and exchanged with local civil rights organizations within the City of Los Angeles. Often these groups are unaware of the remedies available under current laws. Thus,

IT IS RECOMMENDED that the City Attorney seek to establish working arrangements with local civil rights organizations to exchange information regarding complaints of lifestyle discrimination by the insurance industry. The recommended organizations would include, but not be limited to: American Civil Liberties Union; Concerned Insurance Professionals for Human Rights; and the Los Angeles Urban League.

6. Discrimination in insurance opportunities against the non-traditional family unit may have a severe economic impact on many residents of this City. As stated by Brent O. Nance in his testimony before the Task Force on March 16, 1987:

"In our society insurance has become an integral part of our culture. It is often the only practical means available for the majority of us to protect ourselves and families against the financial ruin created by death, disability or serious medical problems. Indeed, insurance has become a basic financial necessity for most Americans."

Accordingly, in order to ensure that Los Angeles City residents, regardless of lifestyle, have equal access and opportunity to insurance services, IT IS RECOMMENDED that if the City Attorney concludes, after a careful analysis of applicable law, that the issues of lifestyle discrimination in insurance opportunities can be addressed through the Unruh Civil Rights Act and/or Business and Professions Code section 17200 et seq. and the City Attorney finds that a person or entity in the insurance business is engaging in a pattern or practice of unlawful discrimination against insureds or applicants for insurance on the basis of lifestyle, that he or she bring an action against that person or entity for violation of the Unruh Civil Rights Act and/or an action for unfair business practices under California Business and Professions Code section 17200 et seq.

CALIFORNIA LEGISLATURE

Joint Select Task Force on the Changing Family

FOR RELEASE ON:
June 9, 1989

CONTACT PERSON:
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LEGISLATIVE TASK FORCE RECOGNIZES DOMESTIC PARTNERSHIPS AS PART OF THE CHANGING FAMILY AGENDA IN CALIFORNIA

Proposals Focus on Employee Benefits, School Curricula, Insurance Discrimination, and Rights of Survivors

A report just published by a state task force urges California lawmakers to recognize domestic partnerships as family relationships.

The report of the Joint Select Task Force on the Changing Family also includes several recommendations to eliminate discrimination against the nearly 1.4 million adults who live in unmarried-couple households in California. The domestic partnership proposals recommend that:

- * Public policies should respond to the changing needs of today's families, while respecting their privacy, integrity, and diversity; (See Report, page 11)
- * Domestic partnerships should be recognized as family relationships; (See Report, page 101)
- * Employee benefit plans should define family broadly enough to encompass the diversity of today's families, regardless of family structure; (See Report, page 27)
- * Public schools should expand curricula to promote recognition of family diversity by providing students with current information on changing family structures; (See Report, page 73)
- * Counseling services, whether publicly funded or provided through private health plans, should serve not just individuals, but all families regardless of their structure, including unmarried couples. (See Report, page 84)
- * Insurance practices, such as rate discrimination against unmarried couples, should be prohibited; (See Report, pages 100-102)
- * Wrongful death laws should be amended to allow adult dependents to recover damages when a domestic partner is killed by a criminal, drunk driver, or by other intentional or negligent conduct of a wrongdoer. (See Report, pages 100-102)

CONSUMER TASK FORCE ON MARITAL STATUS DISCRIMINATION

Office of the Los Angeles City Attorney

Final Report Issued in March 1990

**Excerpts from Supplement to Final Report
Submitted to Insurance Commissioner's Antidiscrimination Task Force
by Thomas F. Coleman, Task Force Member
on July 30, 1992, at San Francisco**

FOR CONSIDERATION BY THE
CONSUMER TASK FORCE ON
MARITAL STATUS DISCRIMINATION

"Findings and Recommendations
Regarding Insurance Practices and Membership Discounts"

Michael F. Cautillo
USC Law Student Intern
November 28, 1989

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EXISTENCE OF MARITAL STATUS

DISCRIMINATION IN LOS ANGELES

This current Task Force on Marital Status Discrimination is an outgrowth of the previous Task Force on Family Diversity which issued its final report on April 9, 1989. Research was conducted to discover the extent of marital status discrimination against consumers. Several areas were targeted. These include the insurance industry, membership discounts in the auto- and health-club industries, and the airline industry. These areas were targeted because they comprise such an integral part of a Los Angelian's day-to-day life. These are areas which are no longer luxuries but, rather, due to their lifestyles, have become such indispensable necessities to the citizens of Los Angeles. As a result, discrimination here effects us most deeply, both in our purses and in our consciences.

The following research reveals that marital status discrimination exists in all of the above areas to differing degrees. It ranges from outright denial of any insurance coverage at all to some unmarried individuals to a total absence of any such discrimination whatsoever. (See Exhibit A, p. 1) Due to the lack of time and resources the research presented here is limited. Thus, this does not imply that the businesses discussed here are the only businesses which discriminate.

Since marital status discrimination seems to pervade all aspects of consumer transactions. However, it frequently varies among businesses. The fact that this discrimination is so bold

in one company and virtually non-existent in another within the same industry gives one pause. If competing companies can survive, and indeed thrive, without discriminating on the basis of marital status, perhaps this type of discrimination has no rational basis at all.

SPECIFIC FINDINGS

A. Insurance

(Automobile, Renters, Liability)

1) **SAFECO**

A) **Lyddy-Martin Company**

The price of renters' insurance was unaffected by either the number of people living in the apartment nor their marital status.

B) **Schlosberg Norman & Associates**

No insurance policies would be issued for either renters or cars if the persons are under the age of 29 and unmarried. If the persons are married, then this agent would issue both renters' and car insurance to them regardless of their ages.

C) **Brown-Beauchamp Insurance Agency**

No joint policies would be issued unless persons were related by blood, marriage or adoption. Otherwise, the individuals must purchase two, sperate insurance policies.

2. **Allstate**

A) **9024 Olympic Boulevard**

Renters' insurance policies were issued independent of the number of persons in the household or their marital status. In addition, the cost of renters' insurance was unaffected by these variables.

This agent would not issue a joint car insurance policy to two unmarried persons but offered to issue the policy to one person and to have the other person as an insured driver with no extra charge.

3. State Farm

A) 4201 Wilshire Boulevard

This agent was willing to issue joint auto and renters' policies regardless of marital status with no extra charge.

B) 7154 Melrose Avenue

This agent was also willing to issue joint auto and renters' policies regardless of marital status with no extra charge.

4. Farmers

A) 3608 1/2 West 6th Street

This agent was also willing to issue both joint car and renters' insurance regardless of marital status or number of persons in the household with no extra charge.

An additional agent at this same office was located regarding the above policies. He hesitated and said he needed to contact the underwriters to obtain more information before he could determine whether he could issue joint policies.

B) Underwriting Headquarters

This underwriter said she would issue an umbrella policy for married couples but two separate policies would be needed for unmarried couples. She did, however, know of one case where a

mother and son were issued a joint policy. (See Exhibit B)

5. **Automobile Club of America**

A) **AAA of Southern California**

This agent will issue joint insurance for both automobiles and home furnishings regardless of marital status and the price would not vary.

B. **Insurance**

(Health)

1. **Blue Cross/Blue Shield**

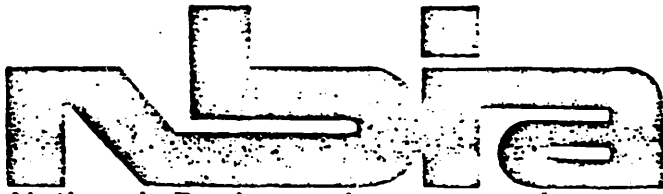
This insurance company offers a family plan, defining a "family" in their advertizing as a couple and their children. The Los Angeles office further defines a "couple" as two married people.

C. **Membership Discounts**

1. **Automobile Clubs**

A) **Automobile Club of Southern California**

AAA charges new members \$50 for the first year with a \$35 renewal fee for each subsequent year. An additional person may be added to the membership plan for an additional charge of \$13 per year. This person must be a spouse of the original member.*



National Business Insurance Agency
Anthony F. Melia, CIC President

February 14, 1990

Ms. Suzanne Miller
Progressive Casualty Insurance
11010 White Rock Road
P.O. Box 2350
Rancho Cordova, California
95741-2350

RE: Department of Insurance File #R9011430
Policy #SMT0260-592-0

Dear Ms. Miller:

I'm in receipt of your correspondence dated February 8, 1990. While you have suggested that there are rating discrepancies, my discussion with the insurance agent Bennett F. Witeby and customer service representative Kathy Walker, she has indicated that notes in her file show that your underwriter Daphne rated the policy on November 28, 1989. This was rated in your underwriting department and not the underwriting department of the insurance agency. Further to that, Daphne acknowledged that the rate was for territory 54 and provided the premiums applicable.

Further, Ms. Walker indicates that she provided your underwriter Daphne with the age, birthdate, and marital status for me and expected that a valid rate would be provided.

While you indicate, "there is also a 20% surcharge applied to unmarried operators", I feel this is wildly discriminating. I doubt that you are able to give any substantial proof that a driver who is divorced, separated, widowed or single, exposes the company to any greater risk than somebody who is married and living with his or her spouse! It is my sound belief that your 20% surcharge for people who have chosen to be single or who have become divorced or separated from their spouse or who have the misfortune of being widowed is repugnant, reprehensible and totally indefensible.

Further, your pointing out in your fifth paragraph that I had the option of requesting a prorata cancellation is fallacious.

1017 N. LaCienega Blvd. West Hollywood, CA 90069-9006 128p 152
P.O. Box 691006, West Hollywood, California 90069-9006 (213) 659-4700

In other words, "if you don't like the fact that we discriminate against single people, go elsewhere"! I do not believe that this the manner in which we expect business to be conducted in the state of California. I feel that discrimination is an ugly tactic for any business and especially insurance companies.

I would hope that you reconsider your errors and revise the premium with an apology.

Sincerely,


Anthony F. Melia

cc: The Department of Insurance, Attn: Candy Hernandez
3450 Wilshire Boulevard
Los Angeles, California 90062

Thomas F. Coleman, Chairperson ✓
Consumer Task Force On Marital Status Discrimination
Office of City Attorney
1800 City Hall East
Los Angeles, California 90012

Joan Howard, Sr. Underwriting Officer
The Department of Insurance
3450 Wilshire Boulevard
Los Angeles, California 90062

/dm



February 8, 1990

Anthony F. Melia
Post Office Box 691006
West Hollywood, CA 90069-9006

Policy Number: SMT 0260-592-0
DOI File Number: R-9011430

Dear Mr. Melia:

This letter is a response to a Department of Insurance inquiry made at your request.

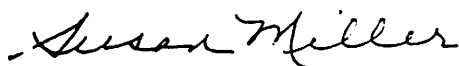
It has been requested that we explain the rating discrepancies on your policy. Enclosed are copies of our Over 50 Motorhome rate tables. I will highlight the proper rates as they relate to your policy. The agent used rates from the wrong annual premium package when he worked up your quotation. The agent used the premium package from territory group one for drivers age 60 and over. The proper rate is listed in territory group four for drivers age 50-59. There is also a 20% surcharge applied to unmarried operators. I will highlight this provision in the rateguide.

The Department of Insurance has requested information pertaining to Progressive's Insurance Rate Filing. This rateguide has been filed as of June 2, 1989 file #3598. The rates in this program have been in effect since March 1, 1988 for New Business and April 1, 1988 for Renewals. A revision to the Uninsured/Underinsured Motorist rates are made effective 12-31-88. The revision was included in the June 2, 1989 rate filing.

When you received your revised premium you had an option of requesting a prorata cancellation on the misquoted rate. You did not, however, request cancellation. You sent in a payment for the remaining balance and this account is now paid in full.

I hope the information I've provided answers your questions as to why the uprate occurred. I'm afraid an explanation of the rating is all I can offer. We do not offer an adjustment of rates on misquotes.

Thank you,



Susan Miller
Progressive Casualty Insurance

cc: Department of Insurance
cc: Agent
cc: File

Enclosure

General Information And Rules

COMMISSION

15% for all business including new, renewal and transfer. Do not retain commission, you will be paid by monthly statement.

BINDING AUTHORITY

Coverage is bound as of the effective date on the application, provided:

1. The envelope containing the application is postmarked within 72 hours of the effective date.
2. The application is filled out completely.
3. The application is signed by the applicant.
4. Proper payment accompanies the application.

If the postmark is later than 72 hours, coverage will be effective on the postmark date.

CANCELLATION GUIDELINES

1. **FLAT CANCELLATIONS** — Flat cancellations will not be permitted after the inception date of the policy.
2. **INSURED'S REQUEST** — Cancellation requested by the insured requires either the return of the policy or the insured's written request. Effective date of the cancellation will be no earlier than the postmark date of the mailing of the request to our office.
3. **LOSS PAYEE** — If there is a loss payee, this office will mail a notice of cancellation, unless the loss payee releases his copy of the policy or submits a written release.
4. **COMPUTATION OF PREMIUM** —
 - a. Cancellations requested by the insured will be cancelled on a short-rate basis using the customary short-rate table. Policies cancelled for non-payment of premium are interpreted to be cancelled by insured's request and will be computed short rate.
 - b. Cancellations requested by the company will be cancelled on a pro-rata basis.
 - c. A \$50 minimum earned premium applies to all cancellations.
5. **TOTAL LOSS** — Cancellations requested due to a total loss will be cancelled effective the day after the loss, if requested within 60 days of the date of loss. After 60 days, standard cancellation rules will apply. A total loss does not automatically cancel an in-force policy. We must receive a signed release.

ENDORSEMENTS

If an endorsement results in additional premium, send no money with the request. The insured will be billed directly for any amounts due.

ELIGIBILITY

To qualify, the motorhome must be:

1. **Used only for recreational purposes.** The motorhome does not qualify if rented, driven to and from work, used for business purposes, used as a principal residence, or if it is the only vehicle in the household.
2. **A conventional or mini-motorhome.** The motorhome does not qualify if it is a camper van or trans van, is a truck mounted camper or is a converted vehicle. A converted vehicle is any vehicle which was not originally designed to be a motorhome but has been altered to include such facilities as cooking and sleeping. Panel trucks and buses are common examples. **Converted vehicles are unacceptable.**
3. **18 feet or longer from front to rear bumper.** Any motorhome under 18 feet is not acceptable.

DISCOUNTS AND SURCHARGES

1. **Transfer Discount - 10%** - If you are renewing a claim-free six month or annual policy from any other insurance company, a transfer discount of 10% applies. This discount continues at renewal as long as the policy remains claim free.
To receive this discount, a copy of the existing policy declarations page, renewal notice or I.D. card must accompany the application. If the previous policy has expired for more than 30 days, the transfer discount does not apply.
2. **Single Surcharge - 20%** - If an applicant or operator is single (including divorced, separated, widowed or living apart), a 20% surcharge applies.
3. **Older Motorhome Surcharge**
Model years 1968 - 1977 — 10% Surcharge applies (Homes 11-20 years old)
Model years 1967 and older — 20% Surcharge applies (Homes over 20 years old).
[Please note after 1/1/89 these model years will change by one year.]
For Motorhomes 11 years old and older, include an interior and exterior photo.

ALL REGULAR OPERATORS MUST:

1. Be age 50 or older.
2. Have at least 12 months experience driving a motorhome (not necessarily the insured vehicle).
3. Have a permanent residence and residence telephone number.
4. Own at least 1 other automobile.
5. Have a driving record with no more than 2 minor violations in the past 3 years. **No accidents or major violations accepted.**
6. Possess a valid U.S. driver's license. No international, revoked or suspended licenses accepted.
7. Owner must have owned a motorhome for at least 12 months.

A REGULAR OPERATOR IS ANYONE WHO DRIVES THE MOTORHOME 10% OR MORE OF THE TIME IT IS IN OPERATION.

SIMPLE RATING:

1. Review eligibility criteria listed above.
2. Review Discounts & Surcharges listed above.
3. Use actual cash value of the motorhome as rating base. Submit for approval if you want the rating base to exceed the purchase price. The rating base is the **most** we will pay in the event of a total loss. **Awnings** must be listed under personal effects and **should not** be included in the ACV of the base motorhome. Comprehensive deductible applies to awnings.
4. Determine appropriate package rate and select any optional additional coverages desired.
5. Apply any discounts or surcharges to all coverages.
6. If you have any questions, call us at:
(916) 638-5212, Ext. 570 or 800-777-3030, Ext. 570
Please see Service Tips section before calling.
7. Send applications to:
Progressive Casualty Insurance Company
P.O. Box 2530
Rancho Cordova, CA 95741-2350
8. **All business in this program must be paid in full with the application. Submit the full gross premium with the application. Do not retain commission.**

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Antigay Insurance Co. Sued

Sought to Exclude Single Males

by Peter Freilberg

A California insurance firm seeking to identify applicants who might get AIDS has been accused in an \$11 million lawsuit of a "crude attempt" to screen out gay men by asking discriminatory questions of single males in "occupations that do not require physical exertion."

As examples of the occupations that a company memorandum said have "provided a disproportionate share of this disease," the firm listed restaurant employees, antique dealers, interior decorators, consultants, florists and "people in the jewelry or fashion business."

The lawsuit, filed May 5 by National Gay Rights Advocates (NGRA) and the Employment Law Center of the Legal Aid Society of San Francisco, charges that the Santa Barbara-based Great Republic Insurance Co. is illegally denying medical insurance to gay men. It was said to be the first major lawsuit challenging the AIDS-related underwriting practices of an insurance company.

"What they're doing," said Ben Schatz, director of NGRA's AIDS Civil Rights Project, "is segregating all applications from single males in stereotypically gay occupations. Their conception of who gay men are is out of some 1940s time warp. They're trying to weed out gay men. We're saying it's illegal under California law."

Great Republic President Bill Pritchett, who sent the memorandum to company agents, could not be reached for comment. Chris Hess, a company spokeswoman, denied that the firm was discriminating against gay men, and said an official statement was being prepared.

In a letter sent by Pritchett to company agents last December, Pritchett said the company, which offers health insurance, was trying to avoid covering "extra-high-risk insureds" such as AIDS patients.

After stating that the company had developed a "profile" of the potential AIDS victim, Pritchett asked agents to give a supplementary questionnaire to

single males engaged in "occupations that do not require physical exertion."

The questionnaire asks whether the applicant has had a weight loss or gain of 10 pounds or more during the past 12 months; experienced any symptoms or complaints or other deviations from good health during the past six months; or has "had, been diagnosed, or treated, or been advised to be tested for any sexually transmitted disease or immune disorder."

An applicant answering "yes" to any of the questions should be rejected for insurance, Pritchett advised his agents.

"These questions," the lawsuit charged, "are so generally stated that virtually no truthful 'special' applicant could deny them all. In effect, then, [the firm] rejects all these applicants."

Peter Groom, a lawyer with the California Department of Insurance, said the company's policy appeared to violate the state law prohibiting discrimination on the basis of sexual orientation

in the availability of insurance.

Groom said that even before the lawsuit was filed, the state agency had told Great Republic that from a brief inspection the guidelines looked like they were discriminatory.

California insurance law, in addition to barring antigay discrimination, prohibits use of the HTLV-3 antibody test to determine insurability. Groom said the department has interpreted this law to even bar companies from asking whether an applicant has taken the test.

The Great Republic lawsuit was filed on behalf of David Hurlbert, a San Francisco gay man who applied for and received medical insurance from Great Republic in October 1985. When Hurlbert reapplied this January, he was asked to answer the supplementary questions. When he refused, Great Republic rejected him.

In addition to an injunction against the policy, the lawsuit seeks damages for the additional insurance expenses Hurlbert incurred elsewhere, as well as \$100,000 for pain and suffering and \$10 million in punitive damages. ●



NGRA's Ben Schatz

LA weekly
3-6, 87

effort.

—reported by Ron Curran

DISCRIMINATION WARS

The title of this item would have been "Women vs. the Insurance Companies and Gays vs. the Auto Club" if it had fit. But here's what's happening:

The National Organization of Women (NOW) filed a lawsuit last week against what it called the "intentional, arbitrary and illegal" discriminatory rate structure of State Farm Insurance. According to NOW, State Farm charges women as much as 65 percent more on health policies than it charges men for the same coverage. The discrepancy was discovered after a NOW member, Estelle Kirsch, was charged \$564 for six months of coverage under a standard policy. She later learned that men are charged only \$345 for the same coverage.

"The rate system should be based on such factors as whether the applicant smokes or drinks, not on gender," says Lisa Foster of the Center for Law in the

Public Interest, which filed the suit. "If we ultimately emerge victorious, it could change the entire California health rate system."

And hot on the heels of a report by a subcommittee of the city Task Force on Family Diversity that cited the Automobile Club of Southern California for "a systematic policy of discrimination against gay and lesbian couples," a delegation of same-sex couples will protest the allegedly discriminatory policies at the club's annual membership meeting on March 9 at the L.A. Hilton.

At the heart of the conflict is a reduced dues rate that charges a member a \$34 annual rate, with the member's "spouse" paying only \$12. (The term "spouse" is not defined by the club.) The task force claims that while the club accepts all opposite-sex applications without verifying their marital status, including those from couples with different last names, "obvious" same-sex applications are denied.

"We will present a list of grievances and suggested bylaw revisions to eliminate the discrimination," says Thomas Coleman, an attorney who also teaches a "Rights of Domestic Partners" class at USC Law School. "Any Auto Club member can attend the meeting if they show their membership card, and it would certainly make an impression if gay and lesbian members showed up to support this cause. If a mainstream corporation like the Auto Club makes this change, it would also have a symbolic effect on the whole system."

—reported by R.C. and Peggy Bush

Suit Filed To Protect Gay Couple's Rights

National Gay Rights Advocates has filed suit against Farmers Insurance Company, on behalf of a gay couple, Boyce Hinman and Larry Beaty, who have been denied a joint "umbrella" liability insurance policy on their house. Farmers has insisted that they buy two separate policies because they are not married. Since state law prohibits gay and lesbian couples from marrying, such underwriting practices effectively bar them from obtaining insurance policies on the same favorable terms as married couples. NGRA contends that Farmers' pricing of the "umbrella" policy violates the Unruh Civil Rights Act prohibiting arbitrary discrimination by business establishments.

"Boyce Hinman and Larry Beaty have lived together for seventeen years," commented NGRA Legal Director Leonard Graff. "They own a home, two cars, and all of their furniture together; they share the common necessities of life and are each others' primary beneficiaries in their wills and insurance policies. Farmers has already issued them joint homeowners and automobile insurance policies, but has now refused the joint 'umbrella' policy. Making them buy two separate policies at twice the cost is quite plainly arbitrary discrimination."

"When businesses attempt to charge gay and lesbian couples more for the same services provided to heterosexual couples on the grounds that 'they aren't married,' they can expect a legal battle. Although legal marriage is not yet an option for gays and lesbians, we will use the civil rights laws and the courts to secure our rights as legitimate couples."

NGRA's cooperating attorneys on the case are Paul Dion and Maureen Sheehy from the law firm of Feldman, Waldman & Kline in San Francisco. The lawsuit was filed in Sacramento County where Boyce Hinman and Larry Beaty reside.

Statement of Walter Zelman

I'm pleased to have this opportunity to support the recommendations in the report of the Task Force on Family Diversity. These recommendations touch on some important issues and I want to emphasize that, as Commissioner, I would implement them aggressively.

The unwillingness of the present Commissioner to enforce these proposals reveals the continuing dark-age-mentality that frequently pervades today's Department of Insurance.

I believe that the Commissioner does have the authority to disallow discrimination based on marital status and that the Commissioner should rule such discrimination to be an "unfair practice".

To be sure, we should distinguish specifically what we are talking about. We are not necessarily talking about individuals sharing the same house -- we are talking about couples living together in marriage-like circumstances.

The latter grouping raises the easier question, in my mind. People should not face discrimination because of their sexual orientation or because they chose to live as a couple without getting married.

Our society should adopt this posture even if insurance companies can demonstrate -- and I doubt they can -- that the actual wearing of a wedding band makes one a better risk. In short, there are some areas of bias we must not accept. There's nothing new in this concept. We apply it in all kinds of social, economic, and political relationships; we should apply it in insurance as well.

The issue of rating individuals differently because they are single as opposed to living as a couple is a slightly more complicated matter. I suspect that insurance companies can make a case to suggest that 25 year old single males are, as a class, a higher risk than married 25 year old males, or males living in marriage-like relationships.

But I doubt that distinction lasts very long. I suspect that by the age of 30 or 35, any such distinctions don't exist and become bias -- a bias that, more than anything else, may impact the gay members of our society.

In addition, I want to say a few words about one other aspect of the Family Diversity Task Force Report. I was surprised that the section on child care did not consider the insurance issue. Insurance has been a critical issue and problem in child care with many facilities at different periods in time, unable to obtain or afford insurance.

I am here today wearing at least three hats.

Yes, first, as an exploratory candidate for the position of State Insurance Commissioner, to be elected for the first time next year, one who will have great responsibility for carrying out the recommendations of this task force - and I already eagerly look forward to doing so!

Second, as a KABC-TV commentator, who has spoken out many times over the years on the issues we are talking about today.

Third, as a proud and long-time Governor and Director of MECLA - an organization which has as its very raison d'etre the rights of women and gays and lesbians and all Americans whose sex or sexual preference or living arrangement is considered, by some, to be outside the norm.

As a member of the Board of MECLA, seven or eight years ago, I first became aware of the very real discrimination against persons of alternate lifestyle practiced by insurance companies. And, while it may be considered risky for someone like me to praise anyone in the insurance industry, I must

tell you it was Tony Melia - also a member of the MECLA Board at that time - who first raised these issues and organized the community around them.

You're going to hear from Tony soon. But I want to thank him and salute him for his pioneer and still pioneering leadership in this area.

Now - first - a couple of brief remarks about the problem - and then my comments on your specific questions.

Because the problem - as I learned from Tony and others - is that the business of insurance is, by its very nature, the business of discrimination...Discrimination, in its broadest sense...Sorting out whom you're going to sell a policy to, and whom you're not..To a limited extent, as a business decision, that kind of sorting out is expected and acceptable.

The evil is - as we have all experienced - that insurance companies have made the need to discriminate in its broadest form a license to discriminate in its most narrow form: discriminating against persons or classes of people for reasons that have nothing to do with risk, that merely

reflect and perpetuate the hatred of the day.

Until the 1960's, in this country, insurers charged black customers more for life insurance because, they said, black people were statistically more likely to die young. A 1961 insurance textbook even justified race-based discrimination as "rational discrimination.":

Jews, expected to live longer, were given better breaks on life insurance. But not for disability insurance. "Jews are expensive", warns a classic insurance manual, because "Jews eat too much, with higher than average incidence of obesity and diabetes."

Fortunately, most insurance companies have ceased basing their rates on religious factors.

Racist ratings, however, continue in the form of redlining of automobile insurance rates in California's urban areas. And gender-based discrimination is still official industry policy. As late as last year, the National Association of Insurance Commissioners condemned race-based rates but refused to condemn gender-based rates.

As a result, all women pay more than men for health and disability insurance and receive less in pensions and annuities.

And, as the National Organization for Women points out, even though four out of five adult drivers now pay "unisex" premiums, women still end up paying proportionately higher than men because they only drive half as many miles a year and have half as many accidents.

And now, thanks to your efforts, the spotlight is also on discrimination based on marital status - discrimination which the insurance industry doesn't even yet admit, but which is nonetheless real - and you know the results:

- *some companies refuse to issue a joint homeowners policy in the names of two same-sex householders;

- *most companies will not offer a family discount on automobile insurance to an unmarried couple who live together and share cars, even though such discounts are routinely offered to married couples;

- *some companies refuse to issue a life insurance policy if

the consumer names a beneficiary who is not related by blood, marriage or adoption.

*unmarried couples also experience lifestyle discrimination when attempting to purchase renters insurance.

And these are just a few of the more blatant examples.

There is no actuarial basis for such discrimination.

There is no moral basis for such discrimination.

And all forms of such discrimination must stop.

1. There is no doubt that refusing to issue joint policies, denying coverage or charging higher premiums on the basis of marital status of an individual or couple violates both the letter and the spirit of Proposition 103.

Among its many provisions, Prop. 103 explicitly makes insurance subject to the Unruh Civil Rights Act, which bars all forms of arbitrary discrimination by businesses of every kind.

2. Under Section 790 of the State Insurance Code;, the Insurance Commission not only can, but should, prohibit marital status discrimination as an "unfair practice."

Companies which refuse to change their policies or continue to discriminate based on marital status should have their license suspended or revoked.

Catching, tracking and taking action against these violations, of course, requires the presence of a strong, consumer-oriented and action-oriented Consumer Protection Division within the Department - which does not now exist, and will not exist until there is an elected Insurance Commissioner.

3. In order to ensure maximum consumer protection, the Insurance Commissioner should - and this Insurance Commissioner will - routinely refer verified cases of discrimination to the State Attorney General, to County District Attorneys and to City Attorneys with possible jurisdiction - so that they are aware of such fraudulent practices and can also take appropriate enforcement action.

While this is a good beginning, there are at least two other enforcement actions which I, as Commissioner, would undertake immediately:

1. To adopt a policy making ratings based on sex, sexual preference or marital status illegal in California for all lines of insurance.

That would make California the fourth state in the nation - after Montana, Massachusetts and Pennsylvania - to adopt gender-neutral ratings - and the first state, to my knowledge, to outlaw discrimination in insurance based on marital status.

2. To outlaw the practice of many insurance companies who refuse to write health insurance policies to any single male, sick or healthy, gay or straight, just because they happen to live in certain zip codes. This is redlining at its worst. This is immoral. This can no longer be tolerated.

Again, Mr. Chairman and Members, thank you for the opportunity to appear before you.

Whatever happens, I am committed to continuing to work with you on these issues - and I hope I have the opportunity to implement your recommendations as California's next Insurance Commissioner.

SUMMARY OF CONWAY COLLIS' TESTIMONY BEFORE THE TASK FORCE ON
MARITAL STATUS DISCRIMINATION, NOVEMBER 28, 1989

I founded and chair the Prop. 103 Intervention Team, among other things, to analyze the rationale behind the insurance industry's rating factors. The team is comprised of lawyers, statisticians, accountants and actuaries but sometimes this posse of experts is not necessary to recognize arbitrary industry rating practices.

At one point I sat down with the top rate-setter for a well-known insurance company and was told that the reasons he was using some criteria was simply because they "seemed" right to him. No statistics. No data. No history to base it on.

Marital status is as arbitrary and nonsensical of a rating factor as any, and as such is clearly discriminatory.

As Chair of the Intervention Team I have called, and will continue to call, for an end to discrimination on the basis of age, gender, sexual orientation or marital status.

What to do about it

We need an Insurance Commissioner who will issue a ruling which prohibits marital status discrimination. The Commissioner would then have the power to "suspend or revoke, in whole or in part, the certificate of authority of any insurer which fails to comply" (Insurance Code section 1861.14). Additionally, the Insurance Code (section 1559.1) empowers the Commissioner to levy a \$50,000 fine against companies who are not in compliance. If the failure to comply is found to be willful then the fine increases to \$250,000.

Finally, the Task Force on Family Diversity's 1988 report correctly recommends that complaints be forwarded from the Insurance Department to the Attorney General's office. This would allow the AG to take direct action or refer the matter to the appropriate district attorney, city attorney or to the Department of Fair Employment and Housing.

It is a disgrace that right now, these agencies have to solicit the Insurance Commissioner to see consumer

complaints. It's a total disgrace. The Insurance Commissioner should be out there vigorously seeking enforcement of the laws she was appointed to oversee.

I believe that a strong Commissioner can deliver the promise of 103, as well as additional insurance reforms, without any new laws. Prop. 103 provided the enforcement mechanisms necessary to implement the law, all we need now is a Commissioner who cares about implementing them.

MR. ARLO SMITH, WITNESS

Please see text of testimony on page 196 of the Supplement.

Questions and responses:

MR. COLEMAN: Noted that the Los Angeles office of the California Attorney General was invited to participate in the task force and the office declined.

MR. AFRIAT: Could Mr. Smith advise the task force how to implement most effectively its recommendations in light of the recent defeat of the domestic partners ordinance in San Francisco?

WITNESS RESPONSE: 1- Proposition S's failure was due to timing, off year election, low voter turnout and a more conservative turnout. Therefore not really a reflection of San Francisco but rather those who went to the polls.

BILL PRESS--WITNESS

Please see text of testimony on page 201 of the Supplement.

Questions and Responses:

MR. NANCE: I am going to play devil's advocate here for a moment. I understand your recommendation to ban rating based on marital status and sex, yet if I were a single or married woman I would probably pay less than a man and might resent the increase I would suffer in order for unisex rating to work. The same idea applies to life insurance. Many companies issue policies to women at a premium rate six years less than men. Are we in essence also discriminating against women by forcing them into an artificial category?

WITNESS RESPONSE: I don't see how you can defend any continuing difference in ratings based on a person's sex, sexual preference or marital status. I think it is a far less inequality that some people may end up paying more. As a society we have more important goals. There certainly will be some people who benefit from the current discrimination.

MR. NANCE: Many life insurance companies require HIV tests for males but not for females.

WITNESS RESPONSE: My policy is and always has been is to oppose the testing for either sex.

CONWAY COLLIS, WITNESS

Please see text of testimony on page 284 of the Supplement.

Questions and responses:

MR. AFRIAT: What about the problem of keeping insurance companies in California if rules are enacted which offend them?

WITNESS RESPONSE: The real long term importance of Proposition 103 is that it creates a totally regulated industry, much as public utilities are regulated presently. When companies attempt to put pressure on group health plans in order to force people out of the plans once they have vested, I see this as an unfair business practice. This unfair practice then should be dealt with as previously mentioned, up to the point of revoking the carrier's business license. Once this starts happening, companies may claim

that they are going to leave, but not very many companies will voluntarily leave the most lucrative auto insurance market in the world. Nor will they want to lose the ability to issue health insurance policies in California. They will cry wolf and then back down. I think if we prosecute a few companies, the others will fall into line.

MR. NANCE: It has frustrated me that we cannot enforce state laws against an out of state trust. Was there anything in Proposition 103 which addressed this?

WITNESS RESPONSE: No there was not but the solution is to require the company and its directors and officers to agree to answer California subpoenas and agree to operate subject to California administrative agencies. If the company refuses, then they should not be granted a license to operate in California.

MR. Mc CAULEY: Historically have such conditions ever been applied to insurers?

WITNESS RESPONSE: No, but in other businesses this has been done. The problem is that the insurance industry has had a virtually free rein. Health facilities are also feeling a tremendous crunch. There is presently authority to form Joint Underwriting Authorities, "JUA's" for necessary public facilities. I would mandate the formation of these for health facilities across the state in order to assure reasonable insurance for these crucial public services.

WALTER ZELMAN: WITNESS

Please see statement on page 209 of the Supplement.

Questions and responses:

MR. COLEMAN: Let me just make sure that I understand correctly what you are saying, that marital status discrimination under present law is illegal, even if the companies have numbers to back up this discrimination, but that with respect to the way the companies treat individuals, marital status may be relevant, but the companies would have to prove the appropriateness of this rating?

WITNESS RESPONSE: Yes. I am still new in this campaign, and I am not ready to say that we should not permit a difference in rating for single people. I do not think that an unmarried couple should be treated differently than a married couple.

MR. NANCE: It is interesting that two of the speakers had different opinions on whether provable rate variations should be permitted. I understand some of the past logic but would like to see changes.

WITNESS RESPONSE: I agree, but so long as we have a system of private insurance, some legal distinctions may be acceptable to use and others not. I think that in health care we should not have a private system, it should be nationalized. Even with a legal distinction, they still must prove that it is relevant to risk. Then we must decide whether it is appropriate or not.

MR. NANCE: We have already made some of these social decisions.

out. Physically disabled parents only receive six months of family maintenance support and this parent may need ongoing care in order to raise children. Social services and insurance companies prefer to institutionalize the disabled and their children rather than pay for "baby sitting".

Homosexual sex offenders were controlled more and treated more harshly by the institutions.

Mr. Coleman: We must hammer away and address our concerns regarding privacy to our representatives in Congress. We should propose legislative policy on human relations for the disabled.

MS. WAXMAN: Does this task force have committees on which the disabled could participate?

MR. COLEMAN: Coleman: No unfortunately we are very short lived and will disband in March. I will however send you a draft of the report so that you may critique it.

MR. SOLIS: The Fair Housing Counsels may be able to assist the disabled.

TONY MELIA: WITNESS

Testimony Summary:

I have worked in the California Insurance Industry for thirty three years and have encountered a great many episodes of discrimination against gay and lesbian couples, unmarried couples, and single people. I was on the MECLA Board for a number of years and am now on the Board of Governors. I was a co-founder and three year president of Business and Professional Association, a group of gay men and lesbian women in Southern California. I was a three

year president of the West Hollywood Chamber of Commerce and am currently on the board. I am President of Comunidad, which is the Catholic Church's outreach group to homosexuals.

Auto Insurance offers a second car discount for a married couple or two related people living together. Two individuals living together generally find that they cannot get this substantial discount--often twenty percent. Furthermore, if a person is not named on the policy, which is common with domestic partners, this person does not have uninsured motorist protection if hit in a taxi or other similar circumstance.

The concept of "additional named insured". Certain rights automatically come to a married or related person in the same household. These rights do not come to any other residents unless they are explicitly named. One cannot depend on insurance as an unnamed additional insured. Yet one can be penalized for the bad driving record of a roommate.

Homeowner's insurance: Unless a person is named on the policy, coverage will not usually extend to that person, and then only to the extent of the insured interest of the named person. An example is a painting owned by two unrelated people and only one is named. The unnamed person's interest needs to be added yet many companies will not do this even though endorsements exist. If each person gets their own policy, co-owned property becomes a problem. Ironically, a guest in your home is covered. This is tricky since insurance companies will ask the claimant if the unnamed person has lived in the residence for a prolonged period, shared in the costs of upkeep etc. Then the company will claim that this person is not

a guest and therefore does not receive guest protection.

Insurance companies justify their actions by stating that they must give personal liability insurance to two separate people under one policy and this is unfair. However, the companies will gladly do this for two brothers or an aunt and a niece without an additional charge.

Often anti-gay reasons are mentioned by the company such as instability, negative court prejudices which might result in undesirable verdicts if the company has to represent a gay person in court, gay people gather high value property and drink and entertain more. One insurance company wrote Mr. Melia a memo demanding that he write more policies for married couples or the company would refuse to accept any more unmarried people. They company later cancelled his agency contract. Another company was angered with the number of gay clients he had sold to and also cancelled his contract.

Often companies have gradings for premium rates such as preferred, standard and surcharge market. When these companies write policies for non-married couples, they almost always prefer the surcharge premiums.

Mr. Melia is unaware of any company which will add an unmarried significant other as a dependant under a life/health policy. Furthermore, underwriters tend to look at single males with greater caution and often reject them.

Insurance companies have taught employers a financial lesson by increasing employee premiums to astronomical heights if high risk people are hired. Mr. Melia referenced Sixty Minutes 11/20/88

in which a man, named Bill Stewart, with a small business, was paying \$114.00 per month for each of his employees in March 1987. Then he became ill with AIDS. By October of 1987 the insurance company had raised the premium to \$297.00, by June of 1988, it was \$1050.00 and before Mr. Stewart's death the premium was \$2000.00 per person per month. Thus a non-gay employer is taught to shy away from single male employees.

Questions and responses:

MR. NANCE: Comment: Auto insurance companies will cancel the policies of their clients with AIDS since they perceive a worsening of driving ability,. Yet with other illnesses and the elderly these same company will prefer to mandate regular driver's ability testing, and doctor's certificates to termination.

WITNESS RESPONSE: : The threatening memo discussed in my testimony was written by Safeco Insurance.

MR. COLEMAN: Do companies have the right to balance their clients by saying that agencies in cities such as West Hollywood must have as many married couples as an agency in a more traditional suburb?

WITNESS RESPONSE: Gay and lesbians do not drive differently than people who are married with children.

MS. HOWARD: Comment: As for cancellations backed by Proposition 103, if the DMV will give the driver a license, then the insurance company may not cancel the policy for a reason such as AIDS.

WITNESS RESPONSE: : Do you force the companies to write these policies at the usual rate?

MS. HOWARD: Yes.

WITNESS RESPONSE: : And what is the turn around time?

MS. HOWARD: We require the companies to answer within ten days.

WITNESS RESPONSE: : Is there anyway to allow a person to drive with insurance until their is a hearing if one is scheduled?

MS. HOWARD: This has not been resolved.

WITNESS RESPONSE: : Suggested that the Insurance Code should mandate a twenty day stay of all cancellations so that people can continue driving while the dispute is resolved.

MS. HOWARD: Liked the idea.

MR. NANCE: Suggested that health insurance cancellations be handled similarly and that the department should be more accessible to the public.

MS. HOWARD: We are trying to distribute brochures but a lot of people still are unaware of us.

WITNESS RESPONSE: : Roxani Gillespie is the first commissioner in my thirty three years of insurance experience to address a memo regarding discrimination against gay and lesbian people and those who are HIV positive.

MR. NANCE: Yet the Department of Insurance worked with Blue Cross to help them dump their high risk clients so as to keep the company viable. In doing so, the Department of Insurance violated their own standards. I cannot get the department to take action against carriers which are repeated offenders. The department will only look at each case on an individual basis but not as an unfair practice.

JOAN HOWARD: I will raise this soon and address more issues,.

MR. NANCE: I have had some good relations with the Department, yet their is still room for improvement.

MR. RHINE: There has been an attempt made in large group policies to exclude disabled infant.

JOAN HOWARD: Yes we need to educate group policy buyers as well.

MR. COLEMAN: Would we get a copy of the Safeco letter?

WITNESS RESPONSE: : Yes, though Safeco won't like it.

Mr. COLEMAN: Since agents are penalized for upsetting the companies, maybe the Department of Insurance needs to have a more confidential complaint system so that the agent can inform them of wrongdoing with out losing agency contracts.

WITNESS RESPONSE: : Yes, the public sees agents as cohorts of the insurance companies whereas "we" are discriminated against for obtaining the "wrong" kind of buyers and our contracts are cancelled. Eventually we are forced out of business by this redlining.

JOAN HOWARD: We now do not allow an auto insurance policy to be cancelled just because an agency contract has been terminated.

WITNESS RESPONSE: : But this is unfair to the agent since then the company can write the policy direct and cancel the agent.

MS. HOWARD: But consumers were suffering previously.

MR. COLEMAN: Ms. Howard has been asked to speak in the future, but her office has been in flux, therefore how about our next meeting? The 1975 Insurance Commission prohibited marital status discrimination, yet this regulation has collected dust. Maybe now we can look forward to more aggressive action.

MS. HOWARD: I'll let you know next week if I can speak and hopefully we will see increased action.

STATEMENT TO THE
CONSUMER TASK FORCE ON
MARITAL STATUS DISCRIMINATION
NOVEMBER 28, 1989

Mr. Chairman and members of the Task Force, my name is Robert Wright and I am appearing at the Chairman's request on behalf of the Automobile Club of Southern California and its affiliated Interinsurance Exchange. I have been asked to address two issues: (1) the Interinsurance Exchange's policy regarding multiple car discounts for unmarried persons; (2) the Automobile Club's policy concerning member and associate membership dues.

Multiple Car Insurance Discount

Prior to 1984, the Exchange's multiple car discount on automobile liability policies was available to families based upon more favorable loss experience for families as a group as compared to all other insureds. In 1984, we were contacted on behalf of two of our unmarried insured members with a demand that the discount be extended to unmarried persons. This demand prompted us to review the basis for the discount.

We found that, at that time, the principal legal control over any differential in insurance rates was the statutory provision that rates may not be "unfairly discriminatory." With regard to insurance rating, this means that rate differentials must be actuarially justified. We knew that married couples with more

than one vehicle had a better loss ratio per vehicle than single insureds with one vehicle. We identified, as the probable reasons for this, the circumstances that married couples live at the same residence and have a common ownership in the vehicles.

After analyzing the situation, we reached the conclusion that we might obtain the same loss experience results if we extended the multiple car discount to other households where these same circumstances existed. Consequently, we expanded our multiple car discount policy to include any household in which the residents have a common ownership in the insured vehicles, live at the same address, and garage the vehicles at that address. We are tracking the loss experience of persons in this group to determine whether the discount is justified.

Membership Policy

The Auto Club's current membership policy is set forth in the Club bylaws. There are two categories of adult membership - member and spouse associate. To be eligible for spouse associate membership status and the spouse associate member dues rate, a person must be the spouse of a member residing in the same household. Currently, member dues are \$35 annually, and spouse associate dues are \$13.

Before 1970, dues were not collected on cards issued to spouse associates. However, an analysis indicated very substantial

usage of emergency road services by nonmember spouses of the "master members" as they were called at that time. To eliminate this unfairness, dues were assessed for the issuance of spouse associate cards, based upon the emergency road services used by these members as a group.

In 1987, a group of members including Mr. Coleman requested a revision of the Club's bylaws to eliminate the spouse associate membership and substitute a "household associate" membership to stop what these members viewed as a discriminatory practice. In response to the request, we undertook a comprehensive review of our membership classifications and dues structure. At the outset, it was contemplated that the work of the committee would be completed within a few months. However, the complexities of the issue presented, and the need to be as thoughtful and thorough as possible in reviewing and evaluating available data resulted in extending the time frame for completion of the study.

The committee conducted a thorough review of our most heavily used and most costly service to various combinations of members and associates resident in the same household. For example, large samples of two-member households of various configurations (such as same surname, different surname, etc.) were reviewed and the average costs of emergency road service usage compared to those of member/spouse associate households. That review clearly established that the costs of member services associated with

member/spouse households as a group are significantly lower than for any other combination.

Additionally, the committee reviewed other relevant factors such as feasibility of administration, the potential for invasion of the privacy of our members, and legal requirements. The committee also spent much time and effort examining a variety of hypothetical alternative classification systems and the impact such systems might have upon the Club and its members.

It appears from our review that the dues rate currently charged for spouse associates is justified by the cost to the membership as a whole of providing services to this group. While we understand the desire of other groups to have available to them what has been commonly viewed as a discount, we believe that the existing method of allocating the cost of membership services according to usage is fair. The Automobile Club is organized on a not-for-profit basis. The dues we charge our members must be adequate to cover the services rendered to our members. If public policy considerations were such as to lead to a law prohibiting a differential in dues between spouse associates and others, the Club's only financially responsible course of action would be the elimination of the spouse associate discount, not the extension of the discount to non-spouse household members. We believe this would be unfairly discriminatory as to the more

than two million Automobile Club members and associates who now justifiedly enjoy the spouse associate rate.

Thank you Mr. Chairman and members. I would be pleased to respond to any questions or comments.

RMW:ilo