

ENDING MARITAL STATUS DISCRIMINATION

BY INSURANCE COMPANIES:

Report of the Insurance Commissioner's

Anti-Discrimination Task Force

SUPPLEMENT

TASK FORCE MEMBERS

Edith Adame *
Latino Issues Forum
San Francisco

Thomas L. Berkley
Attorney at Law
Berkley, Schwartz & Carter
Oakland

Alice Bisno *
Vice Pres. for Govt. Affairs
Auto Club of Southern Calif.
Los Angeles

Hector Brolo
Harmandad Mexicana Nacional
Los Angeles

Robert Brown *
Board Director
Tri Visual Services
Fair Oaks

Hector Cavazos
Administrator
The Alcalá Law Firm
Stockton

Cary Cheldin
Executive Vice President
Crusader Insurance Company
Woodland Hills

Thomas F. Coleman **
Executive Director
Spectrum Institute
Los Angeles

Tom Conneely *
President
Association of California
Insurance Companies
Sacramento

Ken Cooley
Marcella Iglesia-Dorsett
State Farm
Sacramento

Frank Cruz
Manny Sanchez
Gulf Atlantic Life
Insurance Company
Los Angeles

Pamela Davis
President/CEO
Nonprofits Insurance
Alliance of California
Santa Cruz

Randy Dillon
Ventura-Dillon Corp.
Encino

Rosemary Fernandez
Attorney at Law
San Francisco

Stanley Fleishman *
Attorney at Law
Los Angeles

David Glover
Executive Director
Oakland Citizens for
Urban Renewal
Oakland

Frances Gracechild *
Resources for
Independent Living
Sacramento

Robb Greenspan *
The Greenspan Company
Los Angeles

Nettie Hoge
& Norma Garcia *
Consumer Union
San Francisco

Kathy Imahara
Asian Pacific American
Legal Center
Los Angeles

Marian Johnston *
Attorney at Law
Sacramento

Carl Jones
Congress for California Seniors
Sacramento

Herb Jones
Inner City Agents and Brokers
Los Angeles

Sharon L. Kalemkarian *
Legal Aid Foundation
San Diego

Catherine J. Kisse-Sandoval *
Attorney at Law
Munger, Tolles & Olsen
Los Angeles

Muriel Kraszewski *
Farmers Insurance

Daniel Lamaute
Lamaute Financial Group Inc.
Los Angeles

Newell H. Laskey *
PFAIR, Policy Holders for
Auto Insurance Reform
La Mesa

Abby J. Leibman, Esq. *
Managing Director
California Women's Law Center
Los Angeles

Albert C. Lum
Attorney at Law
South Pasadena

Bob Lem
Chinese American Coalition
Monterey Park

Charles W. Martin *
Regional Vice President
Allstate
Orange

CONTENTS

1.	LEGISLATIVE HISTORY OF AB 1721	1
2.	BEATY V. TRUCK INSURANCE EXCHANGE	65
	Opinion of the Court of Appeal	
	Petitions for Review or Depublication	
	Order Extending Time	
	Order Denying Review and Depublication	
3.	SENATE BILL 1923	103
	Legislative Counsel's Digest	
	Bill as Amended on July 1, 1992	
	Analysis by Senate Insurance Committee	
4.	LOS ANGELES CITY TASK FORCE ON FAMILY DIVERSITY	111
	Excerpts from Final Report	
	Report of Research Team on Insurance Discrimination	
5.	JOINT SELECT TASK FORCE ON THE CHANGING FAMILY	143
	Press Release on Domestic Partnership Proposals	
6.	CONSUMER TASK FORCE ON MARITAL STATUS DISCRIMINATION	144
	Excerpts from Supplement to Final Report	

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 * * *

5473

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.

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

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.*

O

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,

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.*

O

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 (Redman)—An act to add Section 1365.5 to the Health and Safety Code, and to amend Section 13140 of the Insurance Code, relating to health coverage.

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

AYES—43

- | | | | | | | | | | | |
|-----------|---------|----------|---------------|--------|-----------|----------|-------------|-----------------|-------------|----------|
| Armas | Bane | Bates | Bronzan | Burton | Calderson | Campbell | Chacon | Clate | Condit | Connelly |
| Costa | Cortese | Elder | Eastin | Epple | Farr | Filante | Fredman | Hannigan | Harris | Hauser |
| Hayden | Hughes | Isenberg | Johnson | Katz | Killie | Kilch | Lempert | Margolin | Moore | Murray |
| O'Connell | Polanco | Ross | Roydel-Allard | Sher | Speter | Tanner | Vasconcelos | Waters, Martins | Mr. Speaker | |

NOES—32

- | | | | | | | | | | | |
|-------|---------|-------------|-------------|-----------|----------|--------|------------|----------|---------|-------|
| Allen | Fader | Faker | Gentley | Harvey | Harvey | Hansen | Harley | Harris | Johnson | Jones |
| Floyd | Frizee | Frizzle | La Follette | Lancaster | Leslie | Lewis | McClintock | McJannet | Mouffoy | |
| Nolan | Pringle | Quackenbush | Seastrand | Seaham | Woodruff | Wyman | | | | |

Bill ordered transmitted to the Senate.

DLW:ne 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~~ *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.*

O

SENATOR ALAN ROBBINS, CHAIRMAN

ASSEMBLY BILL NO. 1721 (Friedman, et. al.) As Amended July 20, 1998
Health & Safety Code
Insurance Code

COPY

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, 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.

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

8/23/89

ASSEMBLY BILL NO. 1721

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.*

O

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).