

Assembly Bill No. 1586

Passed the Assembly September 7, 2005

Chief Clerk of the Assembly

Passed the Senate September 6, 2005

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2005, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1586, Koretz. Insurers: health care service plans: discrimination.

Existing law provides for licensing and regulation of health care service plans by the Department of Managed Health Care. Existing law provides for licensing and regulation of insurers by the Department of Insurance.

Existing law prohibits certain discriminatory acts by health care service plans and insurers. With respect to health care service plans, certain discrimination based on the sex of an enrollee is prohibited. With respect to life and disability insurers, an insurer may not refuse to accept an insurance application, or issue or cancel 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. The Insurance Commissioner has authority to assess specified administrative penalties for a violation of these provisions.

This bill would add "sex" to the insurance provision governing life and disability insurers. The bill, for purposes of both of these provisions, would provide that "sex" shall have the same meaning as "gender," as defined. The bill would state the intent of the Legislature in that regard.

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

SECTION 1. Section 1365.5 of the Health and Safety Code is amended 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, sex, 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 director to adopt or enforce regulations prohibiting discrimination because of sex, marital status, or sexual orientation.

(e) "Sex" as used in this section shall have the same meaning as "gender," as defined in Section 422.56 of the Penal Code.

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, sex, 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. Unless otherwise prohibited by law, premium, price, or charge differentials because of the sex of any individual when based on objective, valid, and up-to-date statistical and actuarial data or sound underwriting practices are not prohibited.

(b) Except as otherwise permitted by law, no admitted insurer, licensed to issue disability insurance policies for hospital, medical, and surgical expenses, shall fail or refuse to accept an application for that insurance, fail or refuse to issue that insurance to an applicant therefor, cancel that insurance, refuse to renew that insurance, charge a higher rate or premium for that insurance, or offer or provide different terms, conditions, or benefits, or place a limitation on coverage under that insurance, on the basis of a person's genetic characteristics that may, under some circumstances, be associated with disability in that person or that person's offspring.

(c) No admitted insurer, licensed to issue disability insurance for hospital, medical, and surgical expenses, shall seek information about a person's genetic characteristics for any nontherapeutic purpose.

(d) No discrimination shall be made in the fees or commissions of agents or brokers for writing or renewing a policy of disability insurance, other than disability income, on the basis of a person's genetic characteristics that may, under some circumstances, be associated with disability in that person or that person's offspring.

(e) 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, sex, 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.

(f) 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.

(g) “Genetic characteristics” as used in this section shall have the same meaning as defined in Section 10123.3.

(h) “Sex” as used in this section shall have the same meaning as “gender,” as defined in Section 422.56 of the Penal Code.

SEC. 3. This act is not intended to mandate that health care service plans or insurers must provide coverage for any particular benefit, nor is it intended to prohibit sound underwriting practices or criteria based on objective, valid, and up-to-date statistical and actuarial data. Rather, the purpose of this act is to prohibit plans and insurers from denying an individual a plan contract or policy, or coverage for a benefit included in the contract or policy, based on the person’s sex, as defined.

Approved _____, 2005

Governor