

Introduced by Senator LenoJanuary 15, 2009

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

LEGISLATIVE COUNSEL'S DIGEST

SB 54, as introduced, Leno. Health care coverage: pricing.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of that act a crime. Existing law prohibits health care service plans from charging premium, price, or charge differentials because of the sex of any individual, but makes an exception for differentials based on specified statistical and actuarial data.

This bill would eliminate that exception.

Because a willful violation of this provision by a health care service plan would be a crime, this bill would impose a state-mandated local program.

Existing law provides for the regulation of life and disability insurers by the Department of Insurance. Existing law prohibits life and disability insurers from engaging in certain discriminatory practices, but specifies that premium, price, or charge differentials because of the sex of any individual are not prohibited when based on specified statistical or actuarial data or sound underwriting practices.

This bill would prohibit a health insurance policy from being subject to premium, price, or charge differentials because of the sex of any individual.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

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

1 SECTION 1. Section 1365.5 of the Health and Safety Code is
2 amended to read:

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

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

25 (c) It shall be deemed a violation of subdivision (a) for any
26 health care service plan to utilize marital status, living
27 arrangements, occupation, sex, beneficiary designation, ZIP Codes
28 or other territorial classification, or any combination thereof for
29 the purpose of establishing sexual orientation. Nothing in this
30 section shall be construed to alter in any manner the existing law

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

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

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

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

10 10140. (a) No admitted insurer, licensed to issue life or
11 disability insurance, shall fail or refuse to accept an application
12 for that insurance, to issue that insurance to an applicant therefor,
13 or issue or cancel that insurance, under conditions less favorable
14 to the insured than in other comparable cases, except for reasons
15 applicable alike to persons of every race, color, religion, sex,
16 national origin, ancestry, or sexual orientation. Race, color,
17 religion, national origin, ancestry, or sexual orientation shall not,
18 of itself, constitute a condition or risk for which a higher rate,
19 premium, or charge may be required of the insured for that
20 insurance. Unless otherwise prohibited by law *and except as*
21 *provided in subdivision (b)*, premium, price, or charge differentials
22 because of the sex of any individual when based on objective,
23 valid, and up-to-date statistical and actuarial data or sound
24 underwriting practices are not prohibited.

25 (b) *A health insurance policy shall not be subject to premium,*
26 *price, or charge differentials because of the sex of any individual.*

27 ~~(b)~~

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

39 ~~(e)~~

1 (d) No admitted insurer, licensed to issue disability insurance
2 for hospital, medical, and surgical expenses, shall seek information
3 about a person’s genetic characteristics for any nontherapeutic
4 purpose.

5 ~~(d)~~

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

11 ~~(e)~~

12 (f) It shall be deemed a violation of subdivision (a) for any
13 insurer to consider sexual orientation in its underwriting criteria
14 or to utilize marital status, living arrangements, occupation, sex,
15 beneficiary designation, ZIP Codes or other territorial classification
16 within this state, or any combination thereof for the purpose of
17 establishing sexual orientation or determining whether to require
18 a test for the presence of the human immunodeficiency virus or
19 antibodies to that virus, where that testing is otherwise permitted
20 by law. Nothing in this section shall be construed to alter, expand,
21 or limit in any manner the existing law respecting the authority of
22 insurers to conduct tests for the presence of human
23 immunodeficiency virus or evidence thereof.

24 ~~(f)~~

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

30 ~~(g)~~

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

33 ~~(h)~~

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

36 SEC. 3. (a) The amendments made by this act to Section
37 1365.5 of the Health and Safety Code shall apply to health care
38 service plan contracts issued, amended, or renewed on or after
39 January 1, 2010.

1 (b) The amendments made by this act to Section 10140 of the
2 Insurance Code shall apply to health insurance policies issued,
3 amended, or renewed on or after January 1, 2010.

4 SEC. 4. No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 the only costs that may be incurred by a local agency or school
7 district will be incurred because this act creates a new crime or
8 infraction, eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section 17556 of
10 the Government Code, or changes the definition of a crime within
11 the meaning of Section 6 of Article XIII B of the California
12 Constitution.