

AMENDED IN ASSEMBLY JUNE 30, 2009

SENATE BILL

No. 54

Introduced by Senator Leno

January 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. An act to amend Section 308 of the Family Code, relating to family law.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 54, as amended, Leno. ~~Health care coverage: pricing. Family law: extraterritorial same-sex marriages.~~

Existing law provides that a marriage contracted outside this state that would be valid by the laws of the jurisdiction in which the marriage was contracted is valid in this state. Existing case law provides that, while on and after November 5, 2008, only marriage between a man and a woman is valid or recognized in California, marriages of same-sex couples that were performed prior to November 5, 2008, are valid.

This bill would provide that, notwithstanding any other provision of law, a marriage between 2 persons of the same sex contracted outside this state that would be valid by the laws of the jurisdiction in which the marriage was contracted is valid in this state if the marriage was contracted prior to November 5, 2008.

Existing case law also recognizes that while, effective November 5, 2008, same-sex couples lack the right to enter into a relationship designated "marriage," they possess the right to the core set of basic substantive legal rights and attributes traditionally associated with marriage, including, the opportunity of an individual to establish an officially recognized and protected family possessing mutual rights and

responsibilities and entitled to the same respect and dignity accorded a union traditionally designated as marriage.

This bill would specify that, notwithstanding any other provision of law, 2 persons of the same sex who contracted a marriage on or after November 5, 2008, that would be valid by the laws of the jurisdiction in which the marriage was contracted shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law, as specified, as are granted to and imposed upon spouses with the sole exception of the designation of “marriage.”

~~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~~*no*. State-mandated local program: ~~yes~~*no*.

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

1 *SECTION 1. Section 308 of the Family Code is amended to*
2 *read:*

3 308. (a) A marriage contracted outside this state that would
4 be valid by the laws of the jurisdiction in which the marriage was
5 contracted is valid in this state.

6 (b) Notwithstanding any other provision of law, a marriage
7 between two persons of the same sex contracted outside this state
8 that would be valid by the laws of the jurisdiction in which the
9 marriage was contracted is valid in this state if the marriage was
10 contracted prior to November 5, 2008.

11 (c) Notwithstanding any other provision of law, two persons of
12 the same sex who contracted a marriage on or after November 5,
13 2008, that would be valid by the laws of the jurisdiction in which
14 the marriage was contracted shall have the same rights,
15 protections, and benefits, and shall be subject to the same
16 responsibilities, obligations, and duties under law, whether they
17 derive from the California Constitution, the United States
18 Constitution, statutes, administrative regulations, court rules,
19 government policies, common law, or any other provisions or
20 sources of law, as are granted to and imposed upon spouses with
21 the sole exception of the designation of “marriage.”

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

24 ~~1365.5. (a) No health care service plan or specialized health~~
25 ~~care service plan shall refuse to enter into any contract or shall~~
26 ~~cancel or decline to renew or reinstate any contract because of the~~
27 ~~race, color, national origin, ancestry, religion, sex, marital status,~~
28 ~~sexual orientation, or age of any contracting party, prospective~~
29 ~~contracting party, or person reasonably expected to benefit from~~
30 ~~that contract as a subscriber, enrollee, member, or otherwise.~~

31 ~~(b) The terms of any contract shall not be modified, and the~~
32 ~~benefits or coverage of any contract shall not be subject to any~~
33 ~~limitations, exceptions, exclusions, reductions, copayments,~~
34 ~~coinsurance, deductibles, reservations, or premium, price, or charge~~
35 ~~differentials, or other modifications because of the race, color,~~
36 ~~national origin, ancestry, religion, sex, marital status, sexual~~
37 ~~orientation, or age of any contracting party, potential contracting~~
38 ~~party, or person reasonably expected to benefit from that contract~~

1 as a subscriber, enrollee, member, or otherwise; except that
2 premium, price, or charge differentials because of the age of any
3 individual when based on objective, valid, and up-to-date statistical
4 and actuarial data are not prohibited.

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

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

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

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

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

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

37 (c) Except as otherwise permitted by law, no admitted insurer,
38 licensed to issue disability insurance policies for hospital, medical,
39 and surgical expenses, shall fail or refuse to accept an application
40 for that insurance, fail or refuse to issue that insurance to an

1 applicant therefor, cancel that insurance, refuse to renew that
2 insurance, charge a higher rate or premium for that insurance, or
3 offer or provide different terms, conditions, or benefits, or place
4 a limitation on coverage under that insurance, on the basis of a
5 person's genetic characteristics that may, under some
6 circumstances, be associated with disability in that person or that
7 person's offspring.

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

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

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

29 (g) This section shall not be construed to limit the authority of
30 the commissioner to adopt regulations prohibiting discrimination
31 because of sex, marital status, or sexual orientation or to enforce
32 these regulations, whether adopted before or on or after January
33 1, 1991.

34 (h) "Genetic characteristics" as used in this section shall have
35 the same meaning as defined in Section 10123.3.

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

38 SEC. 3. (a) The amendments made by this act to Section
39 1365.5 of the Health and Safety Code shall apply to health care

1 service plan contracts issued, amended, or renewed on or after
2 January 1, 2010.

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

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