

AMENDED IN SENATE APRIL 25, 2012

AMENDED IN SENATE APRIL 16, 2012

AMENDED IN SENATE APRIL 9, 2012

**SENATE BILL**

**No. 1172**

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**Introduced by Senator Lieu**

February 22, 2012

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An act to add Article 15 (commencing with Section 865) to Chapter 1 of Division 2 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1172, as amended, Lieu. Sexual orientation change efforts.

Existing law provides for licensing and regulation of various professions in the healing arts, including physicians and surgeons, psychologists, ~~psychiatric technicians~~, marriage and family therapists, educational psychologists, clinical social workers, and licensed professional clinical counselors.

This bill would prohibit psychotherapists, as defined, from performing sexual orientation change efforts, as defined, in the absence of informed consent of the patient. The bill would require a specified statement to be included on the informed consent form. Informed consent would not be effective for patients under 18 years of age. The bill would provide for a cause of action against psychotherapists by patients, former patients, or certain other persons in specified cases.

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. The Legislature finds and declares all of the  
2 following:

3 (a) An individual's sexual orientation, whether homosexual,  
4 bisexual, or heterosexual, is not a disease, disorder, illness,  
5 deficiency, or shortcoming. The major professional associations  
6 of mental health practitioners and researchers in the United States  
7 have recognized this fact for nearly 40 years.

8 (b) Sexual orientation change efforts pose critical health risks  
9 to lesbian, gay, and bisexual people, including confusion,  
10 depression, guilt, helplessness, hopelessness, shame, social  
11 withdrawal, suicidality, substance abuse, stress, disappointment,  
12 self-blame, decreased self-esteem and authenticity to others,  
13 increased self-hatred, hostility and blame toward parents, feelings  
14 of anger and betrayal, loss of friends and potential romantic  
15 partners, problems in sexual and emotional intimacy, sexual  
16 dysfunction, high-risk sexual behaviors, a feeling of being  
17 dehumanized and untrue to self, a loss of faith, and a sense of  
18 having wasted time and resources. This is documented by the  
19 American Psychological Association Task Force on Appropriate  
20 Therapeutic Responses to Sexual Orientation in its 2009 Report  
21 of the Task Force on Appropriate Therapeutic Responses to Sexual  
22 Orientation.

23 (c) Recognizing that there is no evidence that any type of  
24 psychotherapy can change a person's sexual orientation and that  
25 sexual orientation change efforts may cause serious and lasting  
26 harms, the American Psychiatric Association, the American  
27 Psychological Association, the American Counseling Association,  
28 the National Association of Social Workers, and the American  
29 Academy of Pediatrics uniformly oppose efforts to change the  
30 sexual orientation of any individual.

31 (d) Minors who experience family rejection based on their sexual  
32 orientation face especially serious health risks. In one study,  
33 lesbian, gay, and bisexual young adults who reported higher levels  
34 of family rejection during adolescence were 8.4 times more likely  
35 to report having attempted suicide, 5.9 times more likely to report  
36 high levels of depression, 3.4 times more likely to use illegal drugs,  
37 and 3.4 times more likely to report having engaged in unprotected  
38 sexual intercourse compared with peers from families that reported

1 no or low levels of family rejection. This is documented by Caitlyn  
2 Ryan et al. in their article entitled Family Rejection as a Predictor  
3 of Negative Health Outcomes in White and Latino Lesbian, Gay,  
4 and Bisexual Young Adults (2009) 123 Pediatrics 346.

5 (e) California has a compelling interest in protecting the lives  
6 and health of lesbian, gay, and bisexual people.

7 SEC. 2. Article 15 (commencing with Section 865) is added  
8 to Chapter 1 of Division 2 of the Business and Professions Code,  
9 to read:

10

11 Article 15. Sexual Orientation Change Efforts

12

13 865. For the purposes of this article, the following terms shall  
14 have the following meanings:

15 (a)

16 “Informed consent” means consent that is voluntarily provided  
17 in writing by a patient to a psychotherapist with whom the patient  
18 has a therapeutic relationship. The informed consent must explicitly  
19 manifest the patient’s agreement to sexual orientation change  
20 efforts and include a statement as set forth in Section 865.1.  
21 Consent that is provided as a result of therapeutic deception or  
22 duress or coercion is not informed consent.

23 (b) “Psychotherapist” means a physician and surgeon  
24 specializing in the practice of psychiatry, a psychologist, a  
25 psychological assistant, ~~a psychiatric technician~~, a marriage and  
26 family therapist, a registered marriage and family therapist, intern,  
27 or trainee, an educational psychologist, a licensed clinical social  
28 worker, an associate clinical social worker, a licensed professional  
29 clinical counselor, or a registered clinical counselor, intern, or  
30 trainee.

31 (c) “Psychotherapy” means the professional assessment,  
32 evaluation, treatment, or counseling of a mental or emotional  
33 illness, symptom, or condition by a psychotherapist.

34 (d) “Sexual orientation change efforts” means psychotherapy  
35 aimed at altering the sexual or romantic desires, attractions, or  
36 conduct of a person toward people of the same sex so that the  
37 desire, attraction, or conduct is eliminated or reduced or might  
38 instead be directed toward people of a different sex. It does not  
39 include psychotherapy aimed at altering sexual desires, attractions,

1 or conduct toward minors or relatives or regarding sexual activity  
2 with another person without that person’s consent.

3 (e) “Therapeutic deception” means a representation by a  
4 psychotherapist that sexual orientation change efforts are endorsed  
5 by leading medical and mental health associations or that they can  
6 or will reduce or eliminate a person’s sexual or romantic desires,  
7 attractions, or conduct toward another person of the same sex.

8 (f) “Therapeutic relationship” means the relationship that exists  
9 during the time the patient receives psychotherapy.

10 (g) “Leading medical and mental health associations” means  
11 the American Psychiatric Association, the American Psychological  
12 Association, the American Counseling Association, the National  
13 Association of Social Workers, and the American Academy of  
14 Pediatrics.

15 865.1. (a) No psychotherapist shall engage in sexual orientation  
16 change efforts without first obtaining the patient’s informed consent  
17 to therapy as prescribed in subdivision (b).

18 (b) To obtain informed consent, a treating psychotherapist shall  
19 provide a patient with a form to be signed by the patient that  
20 provides informed consent. The form shall include the following  
21 statement:

22  
23 “Having a lesbian, gay, or bisexual sexual orientation is not a  
24 mental disorder. There is no scientific evidence that any types of  
25 therapies are effective in changing a person’s sexual orientation.  
26 Sexual orientation change efforts can be harmful. The risks include,  
27 but are not limited to, depression, anxiety, and self-destructive  
28 behavior.

29 Medical and mental health associations that oppose the use of  
30 sexual orientation change efforts include the American Medical  
31 Association, the American Psychological Association, the  
32 American Psychiatric Association, the National Association of  
33 Social Workers, the American Counseling Association, the  
34 American Academy of Pediatrics, and the American Association  
35 for Marriage and Family Therapy.”

36  
37 865.2. (a) Under no circumstances shall a patient under 18  
38 years of age undergo sexual orientation change efforts, regardless  
39 of the willingness of a patient’s parent, guardian, conservator, or  
40 other person to authorize such efforts.

1 (b) The right to refuse sexual orientation change efforts is not  
2 waived by giving informed consent and that consent may be  
3 withdrawn at any time prior to, during, or between sessions of  
4 sexual orientation change efforts.

5 (c) Any act of duress or coercion by any person or facility shall  
6 invalidate the patient’s consent to sexual orientation change efforts.

7 865.3. (a) (1) A cause of action may be brought against a  
8 psychotherapist by a patient, former patient, or deceased former  
9 patient’s parent, child, or sibling if the sexual orientation change  
10 efforts were conducted without first obtaining informed consent  
11 or by means of therapeutic deception, or if the sexual orientation  
12 change efforts were conducted on a patient who was under 18  
13 years of age at any point during the use of the sexual orientation  
14 change efforts.

15 (2) The patient, former patient, or deceased former patient’s  
16 parent, child, or sibling may recover actual damages, or statutory  
17 damages in the amount of five thousand dollars (\$5,000),  
18 whichever is greater, in addition to costs and reasonable attorney’s  
19 fees.

20 (3) The time for commencement of the action shall be within  
21 eight years of the date the patient or former patient attains the age  
22 of majority or within five years of the date the patient, former  
23 patient, or deceased former patient’s parent, child, or sibling  
24 discovers or reasonably should have discovered that the patient  
25 was subjected to sexual orientation change efforts in violation of  
26 this article.

27 (b) Nothing in this article precludes or limits the right of a  
28 patient, former patient, or deceased former patient’s parent, child,  
29 or sibling to bring a civil action against a psychotherapist arising  
30 from other legal claims.