
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2019 - 2020 Regular Session

SB 1255 (Committee on Insurance) - Insurance

Version: May 18, 2020

Urgency: No

Hearing Date: June 9, 2020

Policy Vote: INS. 11 - 0

Mandate: Yes

Consultant: Janelle Miyashiro

Bill Summary: SB 1255 is the Senate Committee on Insurance omnibus bill and (1) provides procedural flexibility to the California Department of Insurance (CDI) when holding a hearing to suspend or revoke a license for alleged misconduct against seniors; (2) clarifies when a life insurer can restrict access to policy withdrawals; (3) cleans up ambiguity in CDI's licensing statutes; (4) prohibits Life and Disability Income Insurers from denying an application based on HIV status; and (5) makes other technical, clarifying, and nonsubstantive changes.

Fiscal Impact: Unknown cost pressures to the court to adjudicate charges brought against defendants who disclose the results of a HIV test requested by an insurer to a third party without specified authorization as proscribed by this measure. While the courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to fund additional staff and resources.

The CDI does not anticipate SB 1255 to have a fiscal impact on its operations.

Background:

Misconduct against seniors. California Insurance Code 1738.5 was written as a tool for the CDI to be able to bring cases involving senior victims to hearing earlier than otherwise occurs. This is due to the myriad of issues that surround a case involving senior victims including the potential death of the victims, memory issues, and availability of witnesses (who are often times themselves seniors) among other concerns. The code states that a hearing "shall" be conducted within 90 days if the case involves allegations of a senior victim. As currently worded, a licensee accused of wrongdoing against a senior may try to seek dismissal merely because the case was not brought to hearing within 90 days.

This proposal clarifies that the 90-day timeframe is at the "request of the Department" ensuring that cases that are not requested to be heard in 90 days continue to progress through the normal administrative hearing process. This gives CDI the ability to use the expedited hearing time frame for senior cases if necessary and eliminates the potential that cases involving seniors will be dismissed if the case is not filed in 90 days.

Clarification on restricting access to policy withdrawals. AB 1209 (Nazarian) of 2019 restricted a life insurer's ability to limit policyholders' access to policy loans and cash withdrawals. This proposal fixes wording inadvertently left out of Insurance Code section 10235.45(a)(1) regarding cash withdrawals which was correctly included in (a)(2) of the same section.

SB 961 (Gonzalez) The Equal Insurance HIV Act. Due to the on-going COVID-19 pandemic, the unprecedented nature of this legislative session, and the health risks members and the participating public take with each bill presentation, the contents of the May 11, 2020 version of SB 961 (Gonzalez), an unopposed bill previously scheduled to be heard in Senate Insurance Committee were incorporated into this bill. SB 961 prohibits life and disability income insurers from denying an application based solely on HIV status, allows insurers to test for HIV after obtaining written informed consent, and conducts traditional medical underwriting for HIV positive applicants. Additionally, the bill provides civil and criminal penalties for negligent, willful or malicious disclosure of HIV test results.

Other technical, clarifying and nonsubstantive changes. Under existing law, the CDI can take disciplinary action against an applicant or licensee if they are convicted of a misdemeanor listed in the Insurance Code and other laws, as specified. However, a few relevant statutes refer to these types of misdemeanors as “denounced” by the insurance laws. This term is ambiguous and implies that some misdemeanors are worse than others. This bill would remove the ambiguity attached to the word “denounced” and make the law clearer by using the word “specified”, similar to its use in other Insurance Code sections.

Existing law requires the CDI to maintain specified records in its office in San Francisco. The CDI has recently moved its office to Oakland. Provisions in this bill clarify this office is in the San Francisco Bay Area.

Proposed Law: This bill:

- Authorizes a hearing to suspend or revoke a license, registration, or certificate of authority for alleged misconduct perpetrated against a person age 65 or over to be set on the earliest available date if the Office of Administrative Hearings cannot accommodate the hearing within 90 days.
- Authorizes future access to cash withdrawals to be limited to the remaining cash value of the policy.
- Makes other various technical, clarifying, and nonsubstantive changes.
- Incorporates the entirety the contents of the May 11, 2020 version of SB 961 (Gonzalez), which:
 - Prohibits a life or disability income insurer from declining a life or disability income insurance application or enrollment request on the basis of a positive HIV test, regardless of when or at whose direction the test was performed.
 - Specifies that transferring an applicant to the traditional medical underwriting process based on the results of a positive HIV test does not constitute a denial of the application.
 - Imposes increased penalties for the negligent or willful disclosure of results of an HIV test in a manner that identifies or provides identifying information of the person to whom the test results apply.

- Negligent disclosure of an HIV test to a third party would be punishable by civil penalty not to exceed \$2,500, plus court costs, and the discloser will be liable for actual damages proximately caused by disclosure.
 - Willful or malicious disclosure of an HIV test to a third party is punishable by civil penalty of \$5,000 to \$10,000, plus court costs, and the discloser will be liable for actual damages proximately caused by disclosure.
 - Willful, malicious, or negligent disclosure of an HIV test to a third party, that results in economic, bodily, or psychological harm, is a misdemeanor punishable by up to one year imprisonment in county jail, a fine of \$25,000, or both.
 - Specifies each disclosure that violates the above provisions is a separate and actionable offense.
- Requires written authorization to legally disclose test results, for each disclosure made, and requires that authorization include the recipient of the disclosure.
 - Prohibits insurers from considering marital status, sexual orientation, gender identity, or gender expression of an applicant when determining whether to require an HIV test.
 - Requires insurers that ask an applicant to take an HIV test to cover the cost of the test, obtain written informed consent for the test, and provide additional printed materials to the applicant describing important information about HIV, testing, counseling services, and local health resources.
 - Prohibits an application or enrollment request for life or disability income insurance from containing a question pertaining to prior HIV tests, except for limited scope questions on prior testing for the purpose of obtaining insurance.
 - For applicants with a positive HIV test, specifies that insurers shall not report a code to insurance support organizations or other insurers that indicate the applicant was subject to an HIV test.
 - Prohibits an insurer from requiring an HIV test for determining eligibility for hospital, medical, and surgical insurance, or eligibility under health service plans.
 - States that no reimbursement to local agencies for costs associated with the new criminal provisions will be required, pursuant to Section 6 of Article XIII B of the California Constitution.
 - Makes findings and declarations related to the advances in modern antiretroviral therapy, and the increased life expectancy treatment provides to people living with HIV.

Staff Comments:

The fiscal impact of this bill as related to the civil and criminal penalty provisions is unknown and dependent on numerous factors unique to each case. As the crime expanded upon by this bill is punishable as a misdemeanor with the potential for incarceration, certain rights to the defendants are attached to the proceedings, at public expense if the defendants are unable to afford the costs of representation, which could lead to lengthier and more complex court proceedings. Consequently, to the extent that the court adjudicates a small number of these new crimes that otherwise would not have been filed or resulted in a criminal action but for each alleged violation of the disclosure of the results of a HIV test requested by an insurer without specified authorization, court costs of this bill would likely surpass the Suspense File threshold.

Related Legislation: AB 1209 (Nazarian, Chapter 625, Statutes of 2019) requires a life insurance policy issued on or after January 1, 2021, that contains long-term care (LTC) benefits ("hybrid policies") and permits policy loans or cash withdrawals to not prohibit or limit a loan or withdrawal while the insured receives payment of LTC benefits, except as specified. Authorizes the payment of an accelerated death benefit for LTC to be applied toward repayment of a pro rata portion of an outstanding policy loan if the payment results in a pro rata reduction in the cash value of the life insurance policy. Requires an insurer to provide a statement to a policyholder or certificate holder at least 30 days before the first payment and no later than 30 days after every payment of an accelerated death benefit for LTC that includes specified information, including an explanation of policy changes that would or did occur due to the payment.

AB 3305 (Johnston, Chapter 1279, Statutes of 1988) allows life and disability income insurers to summarily deny applicants coverage on the basis of HIV positive test results.

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