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## SENATE COMMITTEE ON INSURANCE

Senator Susan Rubio, Chair  
2019 - 2020 Regular

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<b>Bill No:</b>	SB 961	<b>Hearing Date:</b>	May 14, 2020
<b>Author:</b>	Lena Gonzalez		
<b>Version:</b>	May 11, 2020 Amended		
<b>Urgency:</b>	No	<b>Fiscal:</b>	Yes
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**SUBJECT:** The Equal Insurance HIV Act

**DIGEST:** Prohibits Life and Disability Income Insurers from denying an application based on HIV status.

**ANALYSIS:**

Existing law:

- 1) Imposes a duty on life insurers and disability income insurers to avoid making or permitting unfair distinctions between individuals of the same class in the underwriting of life or disability income insurance for the risks of acquired immune deficiency syndrome (AIDS) and AIDS-related conditions (ARC). Life and disability income insurers may direct applicants to test for HIV of the insurer. (Ins. Code § 799)
- 2) Establishes mandatory and uniform minimum standards for assessing AIDS and ARC risks for determining insurability which are deemed to be sufficiently reliable to be used for life and disability income insurance risk classification and underwriting purposes. (Ins. Code § 799)
- 3) Requires strict confidentiality in the maintenance of personal information obtained through testing, and requires informed consent before any insurer tests for HIV. (Ins. Code § 799)
- 4) Permits a life or disability income insurer to deny an application or enrollment request on the basis of positive test results from the ELISA test and the Western Blot Assay, which detect antibodies to HIV. (Ins. Code § 799.01 - .02)
- 5) Forbids an insurer from testing for HIV for the purpose of determining insurability other than in accordance with the informed consent, counseling, and privacy protection provisions, and unless the insurer pays for the test. (Ins. Code § 799.03 - .04)
- 6) Imposes a civil penalty for negligent or willfully disclosure of HIV antibody test results to any third party, except pursuant to written authorization or informed consent. If the negligent or willful disclosure results in economic, bodily, or psychological harm to the subject of the test, disclosure is punishable by misdemeanor imprisonment in a county jail for up to one year, by a fine not to exceed \$10,000, or by both. (Ins. Code § 799.10)

This bill:

- 1) 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.
- 2) Eliminates the references to HIV antibody test for purposes of civil and criminal penalty provisions and instead would impose 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.
- 3) Specifies each disclosure that violates the above provisions is a separate and actionable offense.
- 4) Requires written authorization to legally disclose test results, for each disclosure made, and requires that authorization include the recipient of the disclosure.
- 5) Prohibits insurers from considering marital status, sexual orientation, gender identity, or gender expression of an applicant when determining whether to require an HIV test.
- 6) 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.
- 7) 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.

- 8) 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.
- 9) Prohibits an insurer from requiring an HIV test for determining eligibility for hospital, medical, and surgical insurance, or eligibility under health service plans.
- 10) 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.
- 11) Makes findings and declarations related to the advances in modern antiretroviral therapy, and the increased life expectancy treatment provides to people living with HIV.

## Background

California law prohibits unfair discrimination between individuals in the same insurance rate class with equal expectation of life for the rates charged, benefits payable, or terms and conditions for life insurance and annuities. (Ins. Code § 790.03 (f)(1)).

Since 1989, California law has statutorily allowed an exception that permits insurers to deny coverage for life or disability income insurance to HIV positive individuals when the denial is based on positive results of an enzyme-linked immunoassay (ELISA) test followed by a positive Western Blot Assay performed by or at the direction of the insurer. (AB 3305, Johnston, Chapter 1279, Statutes of 1988) Additionally, insurers are not prohibited from declining an application or enrollment request for life or disability income insurance because a medical professional has diagnosed the applicant as having AIDS.

In the late 1980's, when existing HIV underwriting laws were enacted, treatment for someone who tested HIV positive was limited, ineffective, expensive, inaccessible and came with severe side effects causing many individuals who were HIV positive to bypass treatment altogether. Since then groundbreaking advancements in HIV treatment mean the disease is no longer the death sentence it once was. Now, a person living with HIV who has access to quality health care can live a long and healthy life.

A 2014 report by the Multicenter AIDS Cohort Study concluded that people living with HIV who start antiretroviral therapy early should have a life expectancy equal to that of the general population. A 2013 study by the North American AIDS Cohort Collaboration on Research and Design (NA-ACCORD) supports this assertion with conclusions that a 20-year-old person living with HIV who receives antiretroviral therapy can expect to live well into their early 70's.

This bill would make several changes to the unauthorized disclosure enforcement provisions by stratifying the penalty provisions and increasing the maximum financial penalty from \$10,000 to \$25,000. Adjusted for inflation, \$10,000 in 1988 amounts to approximately \$21,600 today.<sup>1</sup>

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<sup>1</sup> <https://www.usinflationcalculator.com/>

**Related/Prior Legislation**

**AB 3305** (Johnston, Chapter 1279, Statutes of 1988) put into place significant portions of existing law on this subject, including allowing a life or disability income insurer to deny an application or enrollment request on the basis of positive test results from the ELISA test and the Western Blot Assay.

**ARGUMENTS IN SUPPORT:**

Equality California writes in support, “SB 961 will update California’s outdated and discriminatory insurance underwriting laws to clarify that life and disability income insurance providers may not refuse applications based solely on the outcome of an HIV test. HIV can be treated and managed just as any number of other chronic conditions can be. It is time our laws reflect this reality.”

**SUPPORT:**

California Department of Insurance (Co-sponsor)  
Equality California (Co-sponsor)  
City of West Hollywood  
GLIDE  
The LGBTQ Center Long Beach

**OPPOSITION:**

None received

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