

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, ~~which is to be provided on a form developed by the State Department of Mental Health.~~ *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 require the department to prepare and disseminate an informational brochure on sexual orientation change efforts. The bill would require a psychotherapist who performs sexual orientation change efforts to report certain data to the department, which would be required to summarize this information in an annual report.~~ The bill would provide for a cause of action against psychotherapists by patients ~~or~~, former patients, *or certain other persons* in specified cases.

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~-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*

1 *high levels of depression, 3.4 times more likely to use illegal drugs,*  
 2 *and 3.4 times more likely to report having engaged in unprotected*  
 3 *sexual intercourse compared with peers from families that reported*  
 4 *no or low levels of family rejection. This is documented by Caitlyn*  
 5 *Ryan et al. in their article entitled Family Rejection as a Predictor*  
 6 *of Negative Health Outcomes in White and Latino Lesbian, Gay,*  
 7 *and Bisexual Young Adults (2009) 123 Pediatrics 346.*

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

10 SECTION 4.

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

14

15 Article 15. Sexual Orientation Change Efforts

16

17 865. For the purposes of this article, the following terms shall  
 18 have the following meanings:

19 (a) ~~“Department” means the State Department of Mental Health.~~

20 ~~(b) “Informed consent” means consent that is voluntarily~~  
 21 ~~provided in writing by a patient to a psychotherapist with whom~~  
 22 ~~the patient has a therapeutic relationship. The informed consent~~  
 23 ~~must explicitly manifest the patient’s voluntary informed consent~~  
 24 ~~agreement to sexual orientation change efforts and include a~~  
 25 ~~statement as set forth in Section 865.1. Consent that is provided~~  
 26 ~~as a result of therapeutic deception or duress or coercion is not~~  
 27 ~~informed consent.~~

28

(e)

29 (b) “Psychotherapist” means a physician and surgeon  
 30 specializing in the practice of psychiatry, a psychologist, a  
 31 psychological assistant, a psychiatric technician, a marriage and  
 32 family therapist, a registered marriage and family therapist, intern,  
 33 or trainee, an educational psychologist, a licensed clinical social  
 34 worker, an associate clinical social worker, a licensed professional  
 35 clinical counselor, or a registered clinical counselor, intern, or  
 36 trainee.

37

~~(d)~~

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

1 (e)  
 2 (d) “Sexual orientation change efforts” means psychotherapy  
 3 aimed at altering the sexual or romantic desires, attractions, or  
 4 conduct of a person toward people of the same sex so that the  
 5 desire, attraction, or conduct is eliminated or reduced or might  
 6 instead be directed toward people of a different sex. It does not  
 7 include psychotherapy aimed at altering sexual desires, attractions,  
 8 or conduct toward minors or relatives or regarding sexual activity  
 9 with another person without that person’s consent.

10 (f)  
 11 (e) “Therapeutic deception” means a representation by a  
 12 psychotherapist that sexual orientation change efforts are endorsed  
 13 by leading ~~psychological~~ *medical and mental health* associations  
 14 or that they can or will reduce or eliminate a person’s sexual or  
 15 romantic desires, attractions, or conduct toward another person of  
 16 the same sex.

17 (g)  
 18 (f) “Therapeutic relationship” means the relationship that exists  
 19 during the time the patient receives psychotherapy.

20 (h)  
 21 (g) “Leading ~~psychological~~ *medical and mental health*  
 22 associations” means the American Psychiatric Association, the  
 23 American Psychological Association, the American Counseling  
 24 Association, the National Association of Social Workers, and the  
 25 ~~American Academy of Pediatrics Association.~~

26 865.1. (a) ~~Sexual~~ *No psychotherapist shall engage in sexual*  
 27 *orientation change efforts shall not be engaged in absent without*  
 28 *first obtaining the patient’s informed consent to therapy by the*  
 29 ~~patient~~ as prescribed in subdivision (b).

30 (b) To obtain informed consent, a treating psychotherapist shall  
 31 provide a patient with *a form to be signed by the patient that*  
 32 *provides informed consent. The form shall include the following*  
 33 ~~information prior to engaging in sexual orientation change efforts,~~  
 34 ~~on a form prescribed by the department statement:~~

35 (1) ~~The reason or reasons for recommending the use of sexual~~  
 36 ~~orientation change efforts, including, but not limited to, the nature~~  
 37 ~~and seriousness of the patient’s mental illness, disorder, or~~  
 38 ~~condition leading to the recommendation.~~

1 ~~(2) The nature of the procedures to be used in the sexual~~  
2 ~~orientation change efforts and the anticipated frequency and~~  
3 ~~duration of the sexual orientation change efforts.~~

4 ~~(3) The probable degree and duration, either temporary or~~  
5 ~~permanent, of improvement to the patient’s mental illness, disorder,~~  
6 ~~or condition expected as a result of sexual orientation change~~  
7 ~~efforts.~~

8 ~~(4) The nature, degree, duration, and the probability of the risks~~  
9 ~~and side effects that may be attributable to sexual orientation~~  
10 ~~change efforts.~~

11 ~~(5) The views of leading psychological associations on sexual~~  
12 ~~orientation change efforts.~~

13 ~~(6) A list of all reasonable alternative treatments and why the~~  
14 ~~psychotherapist is recommending sexual orientation change efforts~~  
15 ~~over these alternative treatments.~~

16 ~~(e) At the time a psychotherapist provides the patient with the~~  
17 ~~informed consent form, as prescribed in subdivision (b), the patient~~  
18 ~~shall also receive a copy of the informational brochure~~  
19 ~~disseminated by the department as described in subdivision (e) of~~  
20 ~~Section 865.2.~~

21  
22 *“Having a lesbian, gay, or bisexual sexual orientation is not a*  
23 *mental disorder. There is no scientific evidence that any types of*  
24 *therapies are effective in changing a person’s sexual orientation.*  
25 *Sexual orientation change efforts can be harmful. The risks include,*  
26 *but are not limited to, depression, anxiety, and self-destructive*  
27 *behavior.*

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

35  
36 865.2. (a) ~~(1)~~ Under no circumstances shall a patient under  
37 18 years of age undergo sexual orientation change efforts,  
38 regardless of the willingness of a patient’s parent, guardian,  
39 conservator, or other person to authorize such efforts.

40 (2)

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 (3)

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

8 ~~(b) (1) A psychotherapist who performs sexual orientation~~  
9 ~~change efforts shall file a report with the department setting forth~~  
10 ~~the data required by paragraph (2). An institution in which sexual~~  
11 ~~orientation change efforts are performed shall be the reporting~~  
12 ~~entity for all sexual orientation change efforts treatments performed~~  
13 ~~at that institution.~~

14 ~~(2) The following detailed information for each reporting period~~  
15 ~~shall be made on forms prescribed by the department within 30~~  
16 ~~days after January 1 and July 1 of each year:~~

17 ~~(A) The total number of patients who received sexual orientation~~  
18 ~~change efforts.~~

19 ~~(B) Information regarding each patient who received or~~  
20 ~~continued to receive sexual orientation change efforts, including~~  
21 ~~all of the following:~~

22 ~~(i) Diagnosis.~~

23 ~~(ii) Duration of sexual orientation change efforts and frequency~~  
24 ~~of therapeutic visits.~~

25 ~~(iii) Age, sex, and ethnicity of the patient.~~

26 ~~(iv) Whether the patient was capable of giving his or her written~~  
27 ~~informed consent.~~

28 ~~(v) Whether any complications resulted from sexual orientation~~  
29 ~~change efforts, such as insomnia, anxiety, depression, loss of~~  
30 ~~appetite, loss of employment, suicidality, or death.~~

31 ~~(vi) Whether any preexisting conditions related to the patient's~~  
32 ~~mental or emotional health were exacerbated or otherwise affected~~  
33 ~~by the sexual orientation change efforts.~~

34 ~~(vii) The method of payment for the sexual orientation change~~  
35 ~~efforts and, if applicable, the name of the insurance company~~  
36 ~~making those payments.~~

37 ~~(viii) Any other information required by the department by~~  
38 ~~regulation, except as provided in paragraph (3).~~

39 ~~(3) The name of the patient receiving sexual orientation change~~  
40 ~~efforts shall remain confidential information. No state agency,~~

1 employee, or agent shall require release of the identity of any  
2 person subjected to sexual orientation change efforts. The forms  
3 prescribed by paragraph (2) shall not require any information that  
4 would disclose, directly or indirectly, the identity of the patient.

5 (4) The department shall prepare and publish an annual written  
6 report summarizing the information received under this section.  
7 The report shall not contain any information that identifies or tends  
8 to identify any facility, psychotherapist, or patient. The report shall  
9 be made available to members of the public electronically and in  
10 writing upon request.

11 (e) (1) The department shall prepare and disseminate an  
12 informational brochure for sexual orientation change efforts to  
13 psychotherapists for distribution to patients contemplating being  
14 subjected to sexual orientation change efforts. This brochure shall  
15 be developed by the department in consultation with members of  
16 the Medical Board of California, Board of Psychology, and the  
17 Board of Behavioral Sciences. The brochure shall be provided to  
18 each individual contacting the Medical Board of California and  
19 affiliated health boards, the Board of Psychology, or the Board of  
20 Behavioral Sciences regarding a complaint involving sexual  
21 orientation change efforts.

22 (2) The brochure shall include, but is not limited to, the  
23 following:

24 (A) A legal and an informal definition of sexual orientation  
25 change efforts.

26 (B) A brief description of the scientific findings regarding the  
27 ineffectiveness of sexual orientation change efforts as reported by  
28 the American Psychiatric Association.

29 (C) A brief summary of the stated positions of the leading  
30 psychological associations with respect to sexual orientation change  
31 efforts.

32 (D) A right to legal redress to be set forth as follows:

33  
34 “If you have been subjected to efforts to change your sexual  
35 orientation without providing written informed consent, you may  
36 want to consult an attorney about bringing legal action against  
37 your psychotherapist.”

38  
39 (E) A description of services available for support of patients  
40 with issues relating to their sexual orientation or gender identity.

1     ~~865.3. (a) A cause of action may be brought against a~~  
2 ~~psychotherapist by a patient or former patient, either during the~~  
3 ~~duration of the sexual orientation change efforts or within two~~  
4 ~~years following termination of the therapeutic relationship, for~~  
5 ~~injury for harm caused by sexual orientation change efforts, if the~~  
6 ~~sexual orientation change efforts occurred to a patient who was~~  
7 ~~under 18 years of age at any point during the use of sexual~~  
8 ~~orientation change efforts, or, if the patient is 18 years of age or~~  
9 ~~older, by means of therapeutic deception or without obtaining~~  
10 ~~written informed consent. The patient or former patient may~~  
11 ~~recover damages and attorney's fees.~~

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

20     ~~(2) The patient, former patient, or deceased former patient's~~  
21 ~~parent, child, or sibling may recover actual damages, or statutory~~  
22 ~~damages in the amount of five thousand dollars (\$5,000),~~  
23 ~~whichever is greater, in addition to costs and reasonable attorney's~~  
24 ~~fees.~~

25     ~~(3) The time for commencement of the action shall be within~~  
26 ~~eight years of the date the patient or former patient attains the age~~  
27 ~~of majority or within five years of the date the patient, former~~  
28 ~~patient, or deceased former patient's parent, child, or sibling~~  
29 ~~discovers or reasonably should have discovered that the patient~~  
30 ~~was subjected to sexual orientation change efforts in violation of~~  
31 ~~this article.~~

32     ~~(b) Nothing in this article precludes a patient's right or limits~~  
33 ~~the right of a patient, former patient, or deceased former patient's~~  
34 ~~parent, child, or sibling to bring a civil action against a~~  
35 ~~psychotherapist arising from other legal claims.~~