

CHAPTER 145. ELIMINATION OF UNFAIR SEX OR MARITAL STATUS DISCRIMINATION IN ALL INSURANCE CONTRACTS

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Authority

The provisions of this Chapter 145 issued under The Insurance Company Law of 1921 (40 P. S. §§ 341—991); sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); and the Health Care Services Malpractice Act (40 P. S. §§ 1301.101—1301.1006), unless otherwise noted.

Source

The provisions of this Chapter 145 adopted August 26, 1977, effective October 26, 1977, 7 Pa.B. 2405, unless otherwise noted.

§ 145.1. Purpose.

This chapter prohibits insurers from denying benefits or coverage to individuals on the basis of unfair sex or marital status discrimination in the terms or conditions of insurance contracts and in the underwriting criteria of insurers. This chapter does not prohibit insurers from differentiating in premium rates between sexes where there is sound actuarial justification.

Notes of Decisions

The language in 31 Pa. Code § 145.1 is not an authorization in establishing rates to use sex classification based on actuarial justification, but is phrased merely as not being a prohibition. The provision applies only to the regulation of trade practices and not to the promulgation of rates. *Hartford Accident and Indemnity Co. v. Insurance Commissioner*, 442 A.2d 382 (Pa. Cmwlth. 1982); affirmed 482 A.2d 542 (Pa. 1984).

In dissenting to the majority's finding that gender-based automobile insurance rates are constitutionally violative, Justice McDermott noted that on numerous occasions, the Legislature had an opportunity to abolish gender-based rates but failed to do so, and that Insurance Commission regulations specifically did not prohibit gender-based rate classification where there is sound actuarial discretion. *Hartford Accident and Indemnity Co. v. Insurance Commissioner*, 482 A.2d 542 (Pa. 1984).

§ 145.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Contract—An insurance policy, subscriber agreement, certificate, plan or written agreement for or effecting insurance by whatever name called, including but not limited to clauses, riders or endorsements offered by a person or entity engaged in the business of insurance in this Commonwealth.

Department—The Insurance Department of the Commonwealth.

Insurer—An insurance company, association, reciprocal or interinsurance exchange, nonprofit hospital or professional health service plan, health maintenance organization, fraternal benefit society, beneficial association or other person, corporation, company, partnership, association or other entity acting as an insurer.

§ 145.3. Applicability and scope.

This chapter applies to contracts delivered or issued for delivery in this Commonwealth by an insurer on or after the effective date of this chapter and to existing group contracts which are either amended or renewed on or after the effective date of this chapter.

§ 145.4. Availability requirements.

(a) Availability of an insurance contract may not be denied to an insured or prospective insured on the basis of the sex or marital status of the insured or prospective insured. The amount of benefits payable or a term, condition or type of coverage may not be restricted, modified, excluded or reduced solely on the basis of sex or marital status of the insured or prospective insured. The preceding sentence may not be construed to preclude a person from requesting restrictions, modifications, exclusions or reductions of the benefits payable or of a term, condition or type of coverage of his individual policy. The requirements that the amount of benefits may not be restricted, modified, excluded or reduced solely on the basis of sex or marital status does not apply in the following instances:

- (1) The calculation of the amount of the insurance that can be purchased for a given amount of premium.
- (2) The calculation of settlement options or nonforfeiture benefits under a life insurance policy.

(b) Examples of the practices prohibited by this chapter include but are not limited to the following:

- (1) Denying coverage to members of one sex gainfully employed at home, employed part-time or employed by relatives, when coverage is offered to members of the other sex similarly employed.
- (2) Denying policy riders to members of one sex when the riders are available to members of the other sex.
- (3) Denying, under group contracts, dependent coverage to husbands of female employes when dependent coverage is available to wives of male employes.
- (4) Denying disability income contracts to employed members of one sex when coverage is offered to members of the other sex similarly employed.
- (5) Treating complications of pregnancy different from another illness or sickness under the contract.

(6) Restricting, reducing, modifying or excluding benefits relating to coverage involving the genital organs of only one sex when the restrictions, reductions, modifications or exclusions of benefits are not required for both sexes.

(7) Offering lower maximum monthly benefits to members of one sex than to members of the other sex who are in the same classification under a disability income contract.

(8) Offering more restrictive benefit periods and more restrictive definitions of disability to members of one sex than to members of the other sex in the same classification under a disability income contract.

(9) Establishing different conditions by sex under which the policyholder may exercise benefit options contained in the contract.

(10) Denying maternity benefits to insureds or prospective insureds purchasing an individual contract when comparable family coverage contracts offer maternity benefits.

(11) Limiting the amount of coverage an insured or prospective insured may purchase based upon the marital status of the insured or prospective insured, unless the limitation is for the purpose of designating persons eligible for dependent benefits.

(c) In individual policies containing a conversion privilege, no person may lose coverage due to a change in marital status. The person shall be issued a policy with the insurer which most nearly approximates the coverage of the policy which was in effect prior to the change in marital status. The insured may elect, in writing, to have a reduction in benefits in individual policies, if the benefits are available. The new policy shall be issued without evidence of insurability and shall become effective on the date that coverage terminated under the prior policy.

§ 145.5. Effective date.

This chapter is effective 60 days following publication.

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