

COUNCIL OF THE DISTRICT OF COLUMBIA

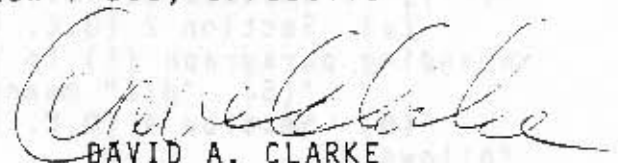
NOTICE

D.C. LAW 7-208

"Prohibition of Discrimination in the Provision  
of Insurance Amendment Act of 1988".

Pursuant to Section 412 of the District of Columbia Self-Government and Governmental Reorganization Act, P. L. 93-198, "the Act", the Council of the District of Columbia adopted Bill No. 7-364 on first and second readings November 29, 1988, and December 13, 1988, respectively. Following the signature of the Mayor on January 6, 1989, this legislation was assigned Act No. 7-279 published in the January 20, 1989, edition of the D.C. Register, (Vol. 36 page 471) and transmitted to Congress on January 23, 1989 for a 30-day review, in accordance with Section 602(c)(1) of the Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional Review Period has expired, and therefore, cites this enactment as D.C. Law 7-208, effective March 16, 1989.



DAVID A. CLARKE  
Chairman to the Council

Dates Counted During the 30-day Congressional Review Period:

January 24, 25, 26, 27, 30, 31  
February 1, 2, 3, 6, 7, 8, 9, 21, 22, 23, 24, 27, 28  
March 1, 2, 3, 6, 7, 8, 9, 10, 13, 14, 15

EFFECTIVE DATE MAR 16 1989

Codification,  
District of Columbia Code  
(1989 Supp.)

AN ACT

D.C. ACT 7 - 279

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JAN 06 1989

To amend the Prohibition of Discrimination in the Provision of Insurance Act of 1986 to allow testing for exposure to the probable causative agent of AIDS, strengthen confidentiality requirements, and revise the penalty provisions.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Prohibition of Discrimination in the Provision of Insurance Amendment Act of 1988".

Sec. 2. The Prohibition of Discrimination in the Provision of Insurance Act of 1986, effective August 7, 1986 (D.C. Law 6-132; D.C. Code, sec. 35-221 et seq.) ("1986 Act"), is amended as follows:

(a) Section 2 (D.C. Code, sec. 35-221) is amended by amending paragraph (5) to read as follows:

Section  
35-221

"(5) "HIV" means human immunodeficiency virus."

(b) Section 4 (D.C. Code, sec. 35-223) is amended as follows:

(1) By repealing subsection (a); and

(2) By striking the phrase "HTLV-III" wherever it appears and inserting the phrase "HIV" in its place.

(c) Section 5 (D.C. Code, sec. 35-224) is amended to read as follows:

Section  
35-224

"Sec. 5. AIDS testing standards, protocols, and appeals.

"(a)(1) Within 30 days of the effective date of the Prohibition of Discrimination in the Provision of Insurance Amendment Act of 1988, the District of Columbia Commissioner of Public Health ("Commissioner") shall certify the testing protocol that is the most reliable and accurate in identifying exposure to the probable causative agent of AIDS, ARC, and the HIV infection. The notice of certification shall include an estimate based on scientific

evidence of the proportion of false positive results expected in use of the testing protocol.

"(2) Within 12 months from the date of the initial certification and at least annually thereafter, the Commissioner shall publish a new or renewal certification based upon an ongoing review of scientific evidence regarding the accuracy and reliability of the testing protocol.

"(b)(1) A named insured who tests positive under the testing protocol certified by the Commissioner may appeal to the Superintendent of Insurance ("Superintendent") to review the testing procedures and results, and may present additional medical evidence, including the results of similar tests for exposure to the probable causative agent of AIDS that the named insured independently obtains, to rebut the positive test results. If the Superintendent determines that the result of the test of the proposed insured is not a true positive, the Superintendent shall order the insurer from which the applicant sought coverage to disregard the positive test result. The Superintendent shall, when necessary, request the advice of the Commissioner in making this determination.

"(2) Hearings related to the appeal provided for in paragraph (1) of this section shall be held in accordance with the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1203; D.C. Code, sec. 1-1501 et seq.).

"(3) An insurer shall apply standard underwriting practices, in accordance with applicable laws and rules of the District, to all life, health, or disability income insurance policies or contracts for individuals who test positive under the testing protocol certified by the Commissioner."

(d) Section 6(b) (D.C. Code, sec. 35-225(b)) is repealed.

(e) Section 7 (D.C. Code, sec. 35-225) is amended to read as follows:

"Sec. 7. Informed consent requirements; restrictions on disclosure.

"(a) No insurer shall request or require a proposed insured to take the testing protocol certified pursuant to section 5 without first obtaining the signature of the proposed insured or the legal guardian of the named insured on a standard informed consent statement prepared and furnished by the Superintendent.

"(b) An insurer shall provide information about the availability of counseling at public and private health facilities to each proposed insured who the insurer requests or requires to take the testing protocol.

Section  
35-225

Section  
35-226

"(c) Before any proposed insured or his or her legal guardian is requested to sign an informed consent statement, the insurer shall provide the proposed insured or his or her legal guardian an explanation of the nature of AIDS, ARC, and the HIV infection, an explanation of the testing protocol, including its purpose, potential uses, limitations, and an updated percentage of false positives, and notice of the right of the proposed insured to appeal to the Superintendent of Insurance, an explanation of the meaning of test results, and a description of the disclosure restrictions established by this act.

"(d) Once an insurer has requested a signature on an informed consent statement pursuant to paragraph (a), and has complied with paragraphs (b) and (c) of this section, the proposed insured or legal guardian of the proposed insured may wait 14 days before signing the informed consent statement.

"(1) An insurer shall not disclose the fact that a proposed insured was tested or the results of the test except to:

"(A) The proposed insured or the legal guardian of the proposed insured;

"(B) A court of competent jurisdiction, pursuant to a lawful court order; or

"(C) Any person named in a written authorization executed by the proposed insured or the legal guardian of the proposed insured.

"(2) An insurer that requires testing of a proposed insured shall maintain records and establish procedures in a manner that protects the privacy of the proposed insured and the confidentiality of the test results.

"(3)(A) The Superintendent of Insurance may, by rule, require an insurer to report numerical data regarding test results to the Commissioner for the limited purpose of performing epidemiological studies. The name, address, or other information that reveals the identity of the individual tested shall not be reported to the Superintendent.

"(B) An insurer shall report numerical data regarding test results to actuaries employed or consulted by the insurer for the limited purpose of performing actuarial studies related to the business of insurance. The name, address, or other information that reveals the identity of the an individual tested shall not be reported to the actuaries."

(f) Section 8 (D.C. Code, sec. 35-227) is amended to read as follows:

Section  
35-227

Sec. 8. Contestability.

"An insurer may contest the validity of a policy or contract for 3 years from the date of issuance, amendment, or renewal of the policy or contract, if the basis for contesting the validity is that the insured knowingly failed or refused to disclose to the insurer that he or she had AIDS at the time of issuance, amendment, or renewal of any policy issued under the 1986 Act, and the insurance company was prohibited by law from conducting a test to determine the exposure of the insured to the AIDS virus on the date the insurer and insured entered into a contract."

(g) Section 9 (D.C. Code, sec. 35-228) is amended to read as follows:

Section  
35-228

"(a) An insurer or an agent, broker or employee of the insurer who violates any provision of this act or rule issued pursuant to this act shall be subject to the suspension or revocation of its license or certificate of authority to transact business in the District, as appropriate, in accordance with the provisions of sections 6 and 27 of the Life Insurance Act, approved June 19, 1934 (48 Stat. 1131, 1140; D.C. Code, secs. 35-405 and 35-426), and sections 3 and 36 of the Fire and Casualty Act, approved October 9, 1940 (54 Stat. 1066, 1079; D.C. Code, secs. 35-1506 and 35-1540), or other applicable District laws.

"(b) Any person who violates the restrictions on disclosure in section 7(d) shall be fined not less than \$500 or more than \$5,000 for each disclosure. In the case of an insurer or an agent, broker or employee of an insurer, the fine shall be in addition to the penalties provided in subsection (a) of this section.

"(c) Any person injured as the result of a violation of this act or a rule issued pursuant to this act, may bring an action for civil damages and other appropriate relief in the Superior Court of the District of Columbia without first pursuing administrative remedies."

(h) By adding a new section 11 to read as follows:

New, Section  
35-230

"Sec. 11. Prohibition against discrimination in the use of AIDS tests.

"(a) No insurer shall inquire about the sexual orientation of an applicant in an application for health, life, or disability income insurance coverage or in an investigation conducted by an insurer or insurance support organization on behalf of an insurer in connection with an application for the coverage.

"(b) Sexual orientation shall not be used as a factor in the underwriting process or in the determination of insurability.

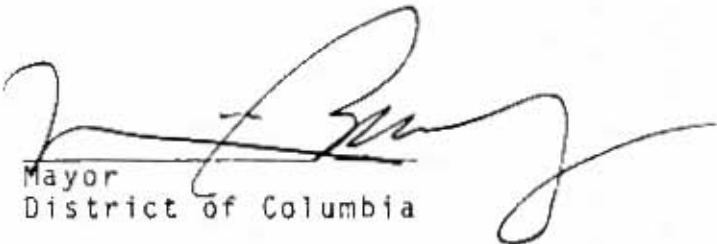
"(c) Insurance support organizations shall be directed by insurers not to investigate, directly or indirectly, the sexual orientation of a proposed insured.



"(d) An insurance company shall not use sexual orientation, lifestyle, living arrangements, occupation, gender, or beneficiary designation to determine whether to test an individual who applies for life, health, or disability income insurance."

Sec. 3. This act shall take effect after a 30-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code, sec. 1-233(c)(1)), and publication in either the District of Columbia Register, the District of Columbia Statutes-at-Large, or the District of Columbia Municipal Regulations.

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Chairman  
Council of the District of Columbia

  
\_\_\_\_\_  
Mayor  
District of Columbia

APPROVED: January 6, 1989



**COUNCIL OF THE DISTRICT OF COLUMBIA**  
Council Period Seven

**RECORD OF OFFICIAL COUNCIL VOTE**

DOCKET NO: B7-364

Item on Consent Calendar

ACTION & DATE: Adopted First Reading, 11-29-88

VOICE VOTE: Approved

Recorded vote on request:

Absent: Rolark

ROLL CALL VOTE — RESULT

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CHMN. CLARKE					NATHANSON					THOMAS SR				
CRAWFORD					RAY					WILSON				
JARVIS					ROLARK					WINTER				
KANE					SCHWARTZ									
MASON					SMITH, JR.									

X — Indicates Vote      A.B. — Absent      N.V. — Present, not voting

CERTIFICATION RECORD

*Russell J. Smith*  
Secretary to the Council

12-22-88  
Date

Item on Consent Calendar

ACTION & DATE: Adopted Final Reading, 12-13-88

VOICE VOTE: Approved

Recorded vote on request:

Absent: Wilson and Smith

ROLL CALL VOTE — RESULT

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CHMN. CLARKE					NATHANSON					THOMAS, SR.				
CRAWFORD					RAY					WILSON				
JARVIS					ROLARK					WINTER				
KANE					SCHWARTZ									
MASON					SMITH, JR.									

X — Indicates Vote      A.B. — Absent      N.V. — Present, not voting

CERTIFICATION RECORD

*Russell J. Smith*  
Secretary to the Council

12-22-88  
Date

Item on Consent Calendar

ACTION & DATE: \_\_\_\_\_

VOICE VOTE: \_\_\_\_\_

Recorded vote on request:

Absent: \_\_\_\_\_

ROLL CALL VOTE — RESULT

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CHMN. CLARKE					NATHANSON					THOMAS, SR.				
CRAWFORD					RAY					WILSON				
JARVIS					ROLARK					WINTER				
KANE					SCHWARTZ									
MASON					SMITH, JR.									

X — Indicates Vote      A.B. — Absent      N.V. — Present, not voting

CERTIFICATION RECORD

Secretary to the Council

Date