

AN ACT

RELATING TO HEALTH; ENACTING THE GENETIC INFORMATION PRIVACY ACT; PROVIDING FOR LIMITATIONS ON GENETIC ANALYSIS AND THE COLLECTION, RETENTION, DISCLOSURE AND USE OF GENETIC INFORMATION; PROHIBITING DISCRIMINATION BY INSURERS BASED ON GENETIC INFORMATION; PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE. -- This act may be cited as the "Genetic Information Privacy Act".

Section 2. DEFINITIONS. -- As used in the Genetic Information Privacy Act:

A. "DNA" means deoxyribonucleic acid, including mitochondrial DNA, complementary DNA and DNA derived from ribonucleic acid;

B. "gene products" means gene fragments, ribonucleic acids or proteins derived from DNA that would be a reflection of or indicate DNA sequence information;

C. "genetic analysis" means a test of a person's DNA, gene products or chromosomes that indicates a propensity for or susceptibility to illness, disease, impairment or other disorders, whether physical or mental; that demonstrates genetic or chromosomal damage due to environmental factors; or that indicates carrier status for disease or disorder; excluded, however, are routine physical

measurements, chemical, blood and urine analysis, tests for drugs, and tests for the presence of HIV virus and any other tests or analyses commonly accepted in clinical practice at the time ordered;

D. "genetic information" means information about the genetic makeup of a person or members of a person's family, including information resulting from genetic analysis, DNA composition, participation in genetic research or use of genetic services;

E. "genetic propensity" means the presence in a person or members of a person's family of real or perceived variations in DNA or other genetic material from that of the normal genome that do not represent the outward physical or medical signs of a genetic disease at the time of consideration; and

F. "insurer" means an insurance company, insurance service or insurance organization that is licensed to engage in the business of insurance in the state and that is subject to state law that regulates insurance within the meaning of Paragraph (2) of Subsection (b) of Section 514 of the federal Employee Retirement Income Security Act of 1974, as amended. "Insurer" does not include an insurance company that is licensed under the Prepaid Dental Plan Law or a company that is solely engaged in the sale of dental insurance and is not licensed under the Prepaid Dental Plan

Law, but under another provision of the New Mexico Insurance Code.

Section 3. GENETIC ANALYSIS PROHIBITED WITHOUT INFORMED CONSENT--EXCEPTIONS. --

A. Except as provided in Subsection C of this section, no person shall obtain genetic information or samples for genetic analysis from a person without first obtaining informed and written consent from the person or the person's authorized representative.

B. Except as provided in Subsection C of this section, genetic analysis of a person or collection, retention, transmission or use of genetic information without the informed and written consent of the person or the person's authorized representative is prohibited.

C. A person's DNA, genetic information or the results of genetic analysis may be obtained, retained, transmitted or used without the person's written and informed consent pursuant to federal or state law or regulations only:

(1) to identify a person in the course of a criminal investigation by a law enforcement agency;

(2) if the person has been convicted of a felony, for purposes of maintaining a DNA database for law enforcement purposes;

(3) to identify deceased persons;

(4) to establish parental identity;

- (5) to screen newborns;
- (6) if the DNA, genetic information or results of genetic analysis are not identified with the person or person's family members;
- (7) by a court for determination of damage awards pursuant to the Genetic Information Privacy Act;
- (8) by medical repositories or registries;
- (9) for the purpose of medical or scientific research and education, including retention of gene products, genetic information or genetic analysis if the identity of the person or person's family members is not disclosed; or
- (10) for the purpose of emergency medical treatment consistent with applicable law.

D. Actions of an insurer and third parties dealing with an insurer in the ordinary course of conducting and administering the business of life, disability income or long-term care insurance are exempt from the provisions of this section if the use of genetic analysis or genetic information for underwriting purposes is based on sound actuarial principles or related to actual or reasonably anticipated experience. However, before or at the time of collecting genetic information for use in conducting and administering the business of life, disability income or long-term care insurance, the insurer shall notify in writing an applicant for insurance or the insured that the

information may be used, transmitted or retained solely for the purpose of conducting and administering the business of life, disability income or long-term care insurance.

E. Nothing in Paragraph (5), (6), (8), (9) or (10) of Subsection C of Section 3 of the Genetic Information Privacy Act authorizes obtaining, retaining, transmitting or using a person's DNA, genetic information or the results of genetic analysis if the person, his authorized representative or guardian, or the parent or guardian of a minor child, objects on the basis of religious tenets or practices.

Section 4. GENETIC DISCRIMINATION PROHIBITED. --

A. Discrimination by an insurer against a person or member of the person's family on the basis of genetic analysis, genetic information or genetic propensity is prohibited.

B. The provisions of this section do not require a health insurer to provide particular benefits other than those provided under the terms of the plan or coverage. A health insurer shall not consider a genetic propensity, susceptibility or carrier status as a pre-existing condition for the purpose of limiting or excluding benefits, establishing rates or providing coverage.

C. The provisions of this section do not prohibit use of genetic analysis, genetic propensity or genetic information by an insurer in the ordinary conduct of business

in connection with life, disability income or long-term care insurance if use of genetic analysis, genetic propensity or genetic information in underwriting is based on sound actuarial principles or related to actual or reasonably anticipated experience.

Section 5. RIGHTS OF RETENTION. --

A. Unless otherwise authorized by Subsection C of Section 3 of the Genetic Information Privacy Act, no person shall retain a person's genetic information, gene products or samples for genetic analysis without first obtaining informed and written consent from the person or the person's authorized representative. This subsection does not affect the status of original medical records of patients, and the rules of confidentiality and accessibility applicable to the records continue in force.

B. A person's genetic information or samples for genetic analysis shall be destroyed promptly upon the specific request by that person or that person's authorized representative unless:

(1) retention is necessary for the purposes of a criminal or death investigation or a criminal or juvenile proceeding;

(2) retention is authorized by order of a court of competent jurisdiction;

(3) retention is authorized under a research

protocol approved by an institution review board pursuant to federal law or a medical registry or repository authorized by state or federal law; or

(4) the genetic information or samples for genetic analysis have been obtained pursuant to Subsection C of Section 3 of the Genetic Information Privacy Act.

C. Actions of an insurer and third parties dealing with an insurer in the ordinary course of conducting and administering the business of life, disability income or long-term care insurance are exempt from the provisions of this section. However, before or at the time of collecting genetic information for use in conducting and administering the business of life, disability income or long-term care insurance, the insurer shall notify in writing an applicant for insurance or the insured that the information may be used, transmitted or retained solely for the purpose of conducting and administering the business of life, disability income or long-term care insurance.

D. Nothing in Paragraph (3) or (4) of Subsection B of Section 5 of the Genetic Information Privacy Act authorizes retention of a person's genetic information or samples for genetic analysis if the person, his authorized representative or guardian, or the parent or guardian of a minor child, objects on the basis of religious tenets or practices.

Section 6. PENALTIES. --

A. The attorney general or district attorney may bring a civil action against a person for violating the provisions of the Genetic Information Privacy Act or to otherwise enforce those provisions.

B. A person whose rights under the provisions of the Genetic Information Privacy Act have been violated may bring a civil action for damages or other relief.

C. The court may order a person who violates the provisions of the Genetic Information Privacy Act to comply with those provisions and may order other appropriate relief, including:

(1) directing an insurer who has violated Section 3 or 4 of the Genetic Information Privacy Act to provide a policy for hospital and medical expenses, including health insurance, group disability insurance or long-term care coverage, to the injured person under the same terms and conditions as would have applied had the violation not occurred;

(2) actual damages;

(3) damages of up to five thousand dollars (\$5,000) in addition to any economic loss if the violation results from willful or grossly negligent conduct; and

(4) reasonable attorney fees and appropriate court costs.

D. Pursuant to Subsection C of Section 3 of the Genetic Information Privacy Act, the court may use genetic information to determine the cause of damage or injury and penalty awards.

E. Each instance of wrongful collection, analysis, retention, disclosure or use of genetic information constitutes a separate and actionable violation of the Genetic Information Privacy Act.

Section 7. APPLICATION OF ACT. --The provisions of this act shall apply to genetic analysis performed and genetic information and gene products obtained after the effective date of this act. _____