

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)
CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 3169

By: Boyd (Betty) and Pope
(Clay) of the House

and

Williams of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to public health and safety; creating the Genetic Nondiscrimination in Insurance Act; providing definitions; prohibiting certain discrimination relating to insurance coverage; providing certain exceptions to prohibitions; prohibiting use of genetic tests and genetic information for certain insurance purposes; making certain violations an unfair practice; providing for equitable relief; specifying penalties; providing certain exceptions for certain types of insurance; creating the Genetic Nondiscrimination in Employment Act; providing definitions; prohibiting certain practices by employers; making certain actions unlawful; providing penalty; providing certain exceptions for certain types of insurance; prohibiting compelled disclosure of genetic information; providing certain exceptions; limiting application to certain types of insurance; limiting application in certain types of transactions; providing for codification; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3614.1 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. This section shall be known and may be cited as the "Genetic Nondiscrimination in Insurance Act".

B. For purposes of the Genetic Nondiscrimination In Insurance Act:

1. "Accident and health insurance" means accident and health insurance as such term is defined in Section 703 of Title 36 of the Oklahoma Statutes, but shall not include disability income or long-term care insurance;

2. "DNA" means deoxyribonucleic acid;

3. "Genetic information" means information derived from the results of a genetic test. Genetic information shall not include family history, the results of a routine physical examination or test, the results of a chemical, blood or urine analysis, the results of a test to determine drug use, the results of a test for the presence of the human immunodeficiency virus, or the results of any other test commonly accepted in clinical practice at the time it is ordered by the insurer;

4. "Genetic test" means a laboratory test of the DNA, RNA, or chromosomes of an individual for the purpose of identifying the presence or absence of inherited alterations in the DNA, RNA, or chromosomes that cause a predisposition for a clinically recognized disease or disorder. "Genetic test" shall not include:

- a. a routine physical examination or a routine test performed as a part of a physical examination,
- b. a chemical, blood, or urine analysis,
- c. a test to determine drug use,
- d. a test for the presence of the human immunodeficiency virus, or
- e. any other test commonly accepted in clinical practice at the time it is ordered by the insurer;

5. "Insurer" means any individual, corporation, association, partnership, insurance support organization, fraternal benefit society, insurance agent, third-party administration, self-insurer, or any other legal entity engaged in the business of insurance which is licensed to do business in or incorporated or domesticated or domiciled in or under the statutes of this state, or actually engaged in business in this state, regardless of where the contract of insurance is written or plan is administered or where the corporation is incorporated, that issues accident and health policies or plans or that administers any other type of

health insurance policy containing medical provisions including, but not limited to, any nonprofit hospital service and indemnity and medical service and indemnity corporation, health maintenance organizations, preferred provider organizations, prepaid health plans and the State and Education Employees Group Health Insurance Plan. Insurer shall not include insurers issuing life, disability income, or long-term care insurance;

6. "Policy" or "policy form" means any policy, contract, plan or agreement of accident and health insurance, or subscriber certificates of medical care corporations, health care corporations, hospital service associations, or health care maintenance organizations, delivered or issued for delivery in this state by any insurer; any certificate, contract or policy issued by a fraternal benefit society; any certificate issued pursuant to a group insurance policy delivered or issued for delivery in this state; and any evidence of coverage issued by a health maintenance organization. Policy or policy form shall not include life, disability income, and long-term care insurance policies; and

7. "RNA" means ribonucleic acid.

C. No insurer shall, for the purpose of determining eligibility of any individual for any insurance coverage, establishing premiums, limiting coverage, renewing coverage, terminating coverage or any other underwriting decision in connection with the offer, sale or renewal or continuation of a policy, except to the extent and in the same fashion as an insurer limits coverage, or increases premiums for loss caused or contributed to by other medical conditions presenting an increased degree of risk:

1. Require or request, directly or indirectly, any individual or a member of the individual's family to obtain a genetic test; and

2. Condition the provision of the policy upon a requirement that an individual take a genetic test.

D. Nothing in this section shall limit an insurer's right to decline an application or enrollment request for a policy, charge

a higher rate or premium for such a policy, or place a limitation on coverage under such a policy, on the basis of manifestations of any condition, disease or disorder.

E. 1. Any violation of subsections C and D of this section by an insurer shall be deemed an unfair practice pursuant to Section 1201 et seq. of Title 36 of the Oklahoma Statutes.

2. In addition, any individual who is damaged by an insurer's violation of this section may recover in a court of competent jurisdiction equitable relief, which may include a retroactive order, directing the insurer to provide insurance coverage to the damaged individual under the same terms and conditions as would have applied had the violation not occurred.

F. Notwithstanding any language in this section to the contrary, this section shall not apply to an insurer or to an individual or third-party dealing with an insurer in the ordinary course of underwriting, conducting, or administering the business of life, disability income, or long-term care insurance.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3614.2 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. This section shall be known and may be cited as the "Genetic Nondiscrimination in Employment Act".

B. For purposes of the Genetic Nondiscrimination in Employment Act:

1. "DNA" means deoxyribonucleic acid;

2. "Employer" means employer as such term is defined in Section 3(d) of the Fair Labor Standards Act of 1938, 29 U.S.C., Section 203(d);

3. "Genetic information" means information derived from the results of a genetic test. Genetic information shall not include family history, the results of a routine physical examination or test, the results of a chemical, blood or urine analysis, the results of a test to determine drug use, the results of a test for the presence of the human immunodeficiency virus, or the results of any other test commonly accepted in clinical practice at the time it is ordered by the insurer;

4. "Genetic test" means a laboratory test of the DNA, RNA, or chromosomes of an individual for the purpose of identifying the presence or absence of inherited alterations in the DNA, RNA, or chromosomes that cause a predisposition for a clinically recognized disease or disorder. "Genetic test" shall not include:

- a. a routine physical examination or a routine test performed as a part of a physical examination,
 - b. a chemical, blood, or urine analysis,
 - c. a test to determine drug use,
 - d. a test for the presence of the human immunodeficiency virus, or
 - e. any other test commonly accepted in clinical practice at the time it is ordered by the insurer;
- and

5. "RNA" means ribonucleic acid.

C. For purposes of distinguishing between or discriminating against or restricting any right or benefit otherwise due or available to an employee or prospective employee, other than in connection with the determination of insurance coverage or benefits, no employer shall:

1. Seek to obtain, or use a genetic test or genetic information of the employee or the prospective employee; or
2. Require a genetic test of or require genetic information from the employee or prospective employee.

D. Any employer violating the provisions of this section, upon conviction thereof, shall be guilty of a misdemeanor and may be punished by a fine of not more than Twenty-five Thousand Dollars (\$25,000.00) or by imprisonment in the county jail for not more than one (1) year, or by both fine and imprisonment.

E. Notwithstanding any language in this section to the contrary, this section shall not apply to an insurer or to an individual or third-party dealing with an insurer in the ordinary course of underwriting, conducting, or administering the business of life, disability income, or long-term care insurance, including, but not limited to, actions taken by an insurer or to an individual or third-party dealing with an insurer in connection

with life, disability income, or long-term care insurance made available by an employer to its employees.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3614.3 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. No person who maintains genetic information shall be compelled to disclose such information pursuant to a request for compulsory disclosure in any judicial, legislative, or administrative proceeding, unless:

1. The request for compulsory disclosure is in accordance with court-ordered paternity testing in a civil action to determine paternity;

2. The individual whose genetic information is requested is a party to the proceeding and the genetic information is at issue;

3. The individual whose genetic information was requested was insured under an insurance policy and the policy as well as the genetic information is at issue; or

4. The genetic information is for use in a law enforcement proceeding or investigation or in instances where an insurer anticipates or is reporting fraud or criminal activity.

B. Notwithstanding any language in this section to the contrary, this section shall not apply to an insurer or to an individual or third-party dealing with an insurer in the ordinary course of underwriting, conducting, or administering the business of life, disability income, or long-term care insurance or in connection with any judicial, legislative or administrative proceeding relating to life, disability income or long-term care insurance. Nothing in this section is intended to govern an insurer or to govern an individual or third-party dealing with an insurer in connection with the obtaining, maintaining, use, disclosure, or redisclosure of genetic information or the results of a genetic test in connection with life, disability income or long-term care insurance or in connection with any judicial, legislative, or administrative proceeding relating to life, disability income or long-term care insurance.

SECTION 4. This act shall become effective July 1, 1998.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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