

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

HOUSE BILL NO. 3169

By: Boyd (Betty)

AS INTRODUCED

An Act relating to public health and safety; creating the Genetic Nondiscrimination Act; providing definitions; prohibiting certain discrimination relating to insurance coverage; providing certain exceptions to disclosure prohibitions; prohibiting certain employment practices; prohibiting use of genetic tests and genetic information for certain insurance purposes; providing for construction; making certain violations an unfair practice; providing for equitable relief; specifying penalties; making certain actions unlawful; providing for civil liability for certain actions; providing for court costs, fees, damages and certain harm; providing for penalties and liability for violation of the act; 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 Act".

B. For purposes of the Genetic Nondiscrimination 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;

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 any specific information about genes, gene products or inherited genetic characteristics that may derive from an individual or a family member. The term shall not include family history information traditionally requested by a physician or insurer;

4. "Genetic test" means a presymptomatic test of a person's genes, gene products, or chromosomes for the purpose of determining the presence or absence of a gene or genes that exhibit abnormalities, defects, or deficiencies, including carrier status, that are known to be the cause of a disease or disorder, or are determined to be associated with a statistically increased risk of development of a disease or disorder. "Genetic test" shall not include a cholesterol test or other test not conducted for the purpose of determining the presence or absence of a person's gene;

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 administers:

- a. accident and health policies or plans or that administers any other type 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,
- b. life insurance policies or plans, or
- c. both accident and health, and life insurance policies or plans;

6. "Life insurance" means life insurance as such term is defined in Section 702 of Title 36 of the Oklahoma Statutes; and

7. "Policy" or "policy form" means any policy, contract, plan or agreement of life insurance, health and accident 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; and

8. "Written informed consent" includes, but is not limited to, at a minimum a description of the specific test to be performed; its purpose, potential uses, and limitations; the meaning of its results; and the right to confidential treatment of the results. Written informed consent must inform the individual that the individual should consider consulting with a genetic counselor or physician prior to taking the test.

C. 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 for a life or accident and health insurance policy or both, 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, no insurer shall:

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

2. Require or request, directly or indirectly, any individual to reveal whether the individual or a member of the individual's family has obtained a genetic test or has refused to take a genetic test;

3. Make any inquiry to determine the results of the test;

4. Condition the provision of the policy on whether an individual or a member of the individual's family has taken a genetic test or refused to take a genetic test;

5. Consider in the determination of rates or any other aspect of insurance coverage provided to an individual whether an individual or a member of the individual's family has taken a genetic test; and

6. Condition the provision of the policy or take into consideration the results of a genetic test taken by an individual or a member of the individual's family.

D. Nothing in this section shall limit an insurer's right to decline an application or enrollment request for a life or accident and health insurance 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 disease or disorder.

E. 1. Any violation of subsections C and D of this section by an insurer shall be deemed an unfair practice subject to Article 12 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 life or accident and health insurance coverage, whichever is appropriate, to the damaged individual under the same terms and conditions as would have applied had the violation not occurred.

F. 1. For purposes of distinguishing between or discriminating against or restricting any right or benefit otherwise due or available to an employee or prospective employee, no employer shall:

- a. seek to obtain, or use a genetic test or genetic information of the employee or the prospective employee, or
- b. require a genetic test of or require genetic information from the employee or prospective employee.

2. Any employer violating the provisions of this subsection, 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.

G. Any insurer or employer who violates the provisions of this section shall also be civilly liable to the individual whose genetic test or genetic information was used without authorization or used in violation of the provisions of this section for court costs, attorney fees, exemplary damages and all actual damages including, but not limited to, damages for economic, bodily or psychological harm which is proximately caused by the unauthorized use or violation of the provisions of this section.

SECTION 2. This act shall become effective July 1, 1998.

SECTION 3. 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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