

HOUSE BILL 1351

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01r2498
CF 01r2722

By: **Delegates Manno and Montgomery**
Introduced and read first time: February 18, 2010
Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Insurance – Use of Genetic Information and Genetic Tests**

3 FOR the purpose of altering the application of certain provisions of law that relate to
4 the use of genetic tests and genetic information by an insurer, nonprofit health
5 service plan, or health maintenance organization; establishing an exception to
6 the prohibition on the release of certain genetic information or results of a
7 genetic test; authorizing an insurer or nonprofit health service plan to use
8 genetic information for certain purposes with regard to a policy or contract of
9 disability insurance, long-term care insurance, or life insurance, under certain
10 circumstances; prohibiting an insurer or nonprofit health service plan from
11 requiring a genetic test for certain purposes with regard to a policy or contract
12 of disability insurance, long-term care insurance, or life insurance or, with a
13 certain exception, releasing certain genetic information under certain
14 circumstances; authorizing an insurer, nonprofit health service plan, or health
15 maintenance organization to disclose certain genetic information to a certain
16 person for a certain purpose, with respect to a health benefit plan or a policy or
17 contract of disability insurance, long-term care insurance, or life insurance;
18 authorizing the Maryland Insurance Commissioner to arrange for an
19 independent review organization to review the use of genetic information by an
20 insurer or nonprofit health service plan for a certain purpose and at the expense
21 of the insurer or nonprofit health service plan; repealing, altering, and adding
22 certain definitions; repealing certain provisions of law relating to the use of
23 genetic tests and genetic information by a carrier that provides long-term care
24 insurance rendered inconsistent by this Act; and generally relating to the use of
25 genetic information and genetic tests with respect to health benefit plans and
26 policies and contracts of disability insurance, long-term care insurance, and life
27 insurance.

28 BY repealing and reenacting, with amendments,
29 Article – Insurance
30 Section 18–120 and 27–909

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2006 Replacement Volume and 2009 Supplement)

3 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
4 MARYLAND, That the Laws of Maryland read as follows:

5 **Article – Insurance**

6 18–120.

7 [(a) (1) In this section the following words have the meanings indicated.

8 (2) (i) “Genetic information” means information derived from a
9 genetic test:

10 1. about chromosomes, genes, gene products, or
11 inherited characteristics that may derive from an individual or a family member;

12 2. not obtained for diagnostic and therapeutic purposes;
13 and

14 3. obtained at a time when the individual to whom the
15 information relates is asymptomatic for the disease, disorder, illness, or impairment to
16 which the information relates.

17 (ii) “Genetic information” does not include information:

18 1. relating to a disease, disorder, illness, or impairment
19 that is or has been manifested or for which the individual is or has been symptomatic;
20 or

21 2. derived from:

22 A. routine physical measurements;

23 B. chemical, blood, and urine analyses;

24 C. tests for the use of drugs;

25 D. tests for the presence of the human immunodeficiency
26 virus; or

27 E. tests for the purpose of diagnosing a manifested
28 disease, disorder, illness, or impairment.

29 (3) “Genetic services” means health services that are provided to
30 obtain, assess, or interpret genetic information or the results of genetic tests.

1 (4) (i) “Genetic test” means an analysis of human DNA, RNA,
2 chromosomes, proteins, or metabolites that detects genotypes, mutations, or
3 chromosomal changes.

4 (ii) “Genetic test” does not include:

5 1. routine physical measurements;

6 2. chemical, blood, and urine analyses;

7 3. tests for the use of drugs;

8 4. tests for the presence of the human immunodeficiency
9 virus; or

10 5. tests that are directly related to a manifested disease,
11 disorder, illness, or impairment that could reasonably be detected by a health care
12 professional with appropriate training and expertise in the field of medicine involved.

13 (b)] In addition to the other practices prohibited under this article, a carrier
14 or insurance producer of a carrier that provides long-term care insurance may not:

15 (1) employ a method of marketing that induces or tends to induce the
16 purchase of long-term care insurance through undue pressure;

17 (2) use a method of marketing that fails to disclose in a conspicuous
18 manner that a purpose of the method of marketing is solicitation of insurance, and
19 that contact will be made by an insurance producer or carrier; **OR**

20 (3) knowingly make a misleading representation or an incomplete or
21 fraudulent comparison of policies or carriers to induce a person to lapse, forfeit,
22 surrender, terminate, retain, pledge, assign, borrow on, or convert a policy or take out
23 a policy with another carrier[;

24 (4) request or require a genetic test to:

25 (i) deny or limit the amount, extent, or kind of long-term care
26 insurance coverage available to an individual; or

27 (ii) charge a different rate for the same long-term care
28 insurance coverage; or

29 (5) use a genetic test, the results of a genetic test, genetic information,
30 or a request for genetic services to:

1 (i) deny or limit the amount, extent, or kind of long-term care
2 insurance coverage available to an individual; or

3 (ii) charge a different rate for the same long-term care
4 insurance].

5 [(c) Notwithstanding subsection (b)(5) of this section, if the use is based on
6 sound actuarial principles, the results of a genetic test or genetic information may be
7 used to:

8 (1) deny or limit the amount, extent, or kind of long-term care
9 insurance coverage made available to an individual; or

10 (2) charge a different rate for the same long-term care insurance.]

11 27-909.

12 (a) (1) In this section the following words have the meanings indicated.

13 [(2) "Gene product" means the biochemical material, either RNA or
14 protein, made by a gene.

15 (3) (i) "Genetic information" means information:

16 1. about chromosomes, genes, gene products, or
17 inherited characteristics that may derive from an individual or a family member;

18 2. obtained for diagnostic and therapeutic purposes; and

19 3. obtained at a time when the individual to whom the
20 information relates is asymptomatic for the disease.

21 (ii) "Genetic information" does not include:

22 1. routine physical measurements;

23 2. chemical, blood, and urine analyses that are widely
24 accepted and in use in clinical practice;

25 3. tests for use of drugs; or

26 4. tests for the presence of the human immunodeficiency
27 virus.

28 (4) "Genetic services" means health services that are provided to
29 obtain, assess, and interpret genetic information for diagnostic and therapeutic
30 purposes and for genetic education and counseling.

1 **2. THE GENETIC TESTS OF A FAMILY MEMBER; AND**

2 **3. THE MANIFESTATION OF A DISEASE OR DISORDER**
3 **IN A FAMILY MEMBER.**

4 **(II) “GENETIC INFORMATION” INCLUDES ANY REQUEST FOR**
5 **OR RECEIPT OF GENETIC SERVICES OR ANY PARTICIPATION IN CLINICAL**
6 **RESEARCH THAT INCLUDES GENETIC SERVICES, BY AN INDIVIDUAL OR A FAMILY**
7 **MEMBER.**

8 **(III) “GENETIC INFORMATION” DOES NOT INCLUDE**
9 **INFORMATION ABOUT THE SEX OR AGE OF AN INDIVIDUAL.**

10 **(8) “GENETIC SERVICES” MEANS:**

11 **(I) A GENETIC TEST;**

12 **(II) GENETIC COUNSELING, INCLUDING OBTAINING,**
13 **INTERPRETING, OR ASSESSING GENETIC INFORMATION; OR**

14 **(III) GENETIC EDUCATION.**

15 **(9) (I) “GENETIC TEST” MEANS AN ANALYSIS OF HUMAN DNA,**
16 **RNA, CHROMOSOMES, PROTEINS, OR METABOLITES THAT DETECTS**
17 **GENOTYPES, MUTATIONS, OR CHROMOSOMAL CHANGES.**

18 **(II) “GENETIC TEST” DOES NOT INCLUDE:**

19 **1. AN ANALYSIS OF PROTEINS OR METABOLITES**
20 **THAT DOES NOT DETECT GENOTYPES, MUTATIONS, OR CHROMOSOMAL**
21 **CHANGES; OR**

22 **2. AN ANALYSIS OF PROTEINS OR METABOLITES**
23 **THAT IS DIRECTLY RELATED TO A MANIFESTED DISEASE, DISORDER, OR**
24 **PATHOLOGICAL CONDITION THAT COULD REASONABLY BE DETECTED BY A**
25 **HEALTH CARE PROFESSIONAL WITH APPROPRIATE TRAINING AND EXPERTISE IN**
26 **THE FIELD OF MEDICINE INVOLVED.**

27 **(10) “HEALTH BENEFIT PLAN” HAS THE MEANING STATED IN**
28 **§ 15–1401 OF THIS ARTICLE.**

29 **(b) [This section does not apply to life insurance policies, annuity contracts,**
30 **long-term care insurance policies, or disability insurance policies.**

1 (c) An] **WITH RESPECT TO A HEALTH BENEFIT PLAN, AN** insurer,
2 nonprofit health service plan, or health maintenance organization may not:

3 (1) use a genetic test, the results of a genetic test, genetic information,
4 or a request for genetic services, to reject, deny, limit, cancel, refuse to renew, increase
5 the rates of, affect the terms or conditions of, or otherwise affect a [health insurance]
6 policy or contract;

7 (2) request or require a genetic test, the results of a genetic test, or
8 genetic information for the purpose of determining whether or not to issue or renew
9 [health benefits coverage] **A HEALTH BENEFIT PLAN**; or

10 (3) **EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION,**
11 release identifiable genetic information or the results of a genetic test to any person
12 who is not an employee of the insurer, nonprofit health service plan, or health
13 maintenance organization or a participating health care provider who provides
14 medical services to insureds or enrollees without the prior written authorization of the
15 individual from whom the **GENETIC** test results or genetic information was obtained.

16 **(C) WITH RESPECT TO A POLICY OR CONTRACT OF DISABILITY**
17 **INSURANCE, LONG-TERM CARE INSURANCE, OR LIFE INSURANCE, AN INSURER**
18 **OR NONPROFIT HEALTH SERVICE PLAN:**

19 **(1) MAY USE GENETIC INFORMATION TO REJECT, DENY, LIMIT,**
20 **INCREASE THE RATES OF, OR OTHERWISE AFFECT A POLICY OR CONTRACT TO**
21 **THE EXTENT THE USE OF THE GENETIC INFORMATION:**

22 **(I) IS BASED ON SOUND ACTUARIAL PRINCIPLES; AND**

23 **(II) DOES NOT VIOLATE ANY PROVISION OF § 27-501 OF**
24 **THIS TITLE;**

25 **(2) MAY NOT REQUIRE A GENETIC TEST TO REJECT, DENY, LIMIT,**
26 **INCREASE THE RATES OF, OR OTHERWISE AFFECT A POLICY OR CONTRACT; AND**

27 **(3) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION,**
28 **MAY NOT RELEASE IDENTIFIABLE GENETIC INFORMATION TO ANY PERSON WHO**
29 **IS NOT AN EMPLOYEE OF THE INSURER OR NONPROFIT HEALTH SERVICE PLAN**
30 **WITHOUT THE PRIOR WRITTEN AUTHORIZATION OF THE INDIVIDUAL FROM**
31 **WHOM THE GENETIC INFORMATION WAS OBTAINED.**

32 (d) [Disclosure of identifiable genetic information to an employee or health
33 care provider authorized under subsection (c)(3) of this section shall only be] **WITH**
34 **RESPECT TO A HEALTH BENEFIT PLAN OR A POLICY OR CONTRACT OF**

1 **DISABILITY INSURANCE, LONG-TERM CARE INSURANCE, OR LIFE INSURANCE,**
2 **AN INSURER, NONPROFIT HEALTH SERVICE PLAN, OR HEALTH MAINTENANCE**
3 **ORGANIZATION MAY DISCLOSE IDENTIFIABLE GENETIC INFORMATION TO A**
4 **PERSON WHO IS NOT AN EMPLOYEE OR A HEALTH CARE PROVIDER** for the **SOLE**
5 purpose of:

6 (1) providing medical care to patients; or

7 (2) conducting research that has been approved by an institutional
8 review board established in accordance with federal law.

9 (e) The authorization described in [subsection] **SUBSECTIONS (B)(3) AND**
10 **(c)(3)** of this section is required for each disclosure and shall describe the individual or
11 entities making the disclosure, to whom the disclosure is to be made, and the
12 information to be disclosed.

13 (f) **TO DETERMINE THE COMPLIANCE OF AN INSURER OR NONPROFIT**
14 **HEALTH SERVICE PLAN WITH SUBSECTION (C) OF THIS SECTION, THE**
15 **COMMISSIONER MAY ARRANGE FOR AN INDEPENDENT REVIEW ORGANIZATION**
16 **TO REVIEW THE USE OF GENETIC INFORMATION BY THE INSURER OR**
17 **NONPROFIT HEALTH SERVICE PLAN AT THE EXPENSE OF THE INSURER OR**
18 **NONPROFIT HEALTH SERVICE PLAN.**

19 (G) (1) For purposes of this subsection, §§ 4-113, 4-114, 27-501, and
20 27-505 of this article apply to nonprofit health service plans and health maintenance
21 organizations.

22 (2) The Commissioner may issue an order under §§ 4-113, 4-114,
23 27-501, and 27-505 of this article if the Commissioner finds a violation of this section.

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 October 1, 2010.