

CHAPTER 313

INSURANCE

SENATE BILL 94-058

BY SENATORS Wham, Cassidy, Hopper, Mares, Mendez, and Traylor;
also REPRESENTATIVES Faatz, Kerns, and Snyder.

AN ACT**CONCERNING LIMITATIONS ON GENETIC TESTING.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Part 11 of article 3 of title 10, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

10-3-1104.7. Genetic testing - declaration - definitions - limitations on disclosure of information - liability. (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DETERMINES THAT RECENT ADVANCES IN GENETIC SCIENCE HAVE LED TO IMPROVEMENTS IN THE DIAGNOSIS, TREATMENT, AND UNDERSTANDING OF A SIGNIFICANT NUMBER OF HUMAN DISEASES. THE GENERAL ASSEMBLY FURTHER DECLARES THAT:

(a) GENETIC INFORMATION IS THE UNIQUE PROPERTY OF THE INDIVIDUAL TO WHOM THE INFORMATION PERTAINS;

(b) ANY INFORMATION CONCERNING AN INDIVIDUAL OBTAINED THROUGH THE USE OF GENETIC TECHNIQUES MAY BE SUBJECT TO ABUSES IF DISCLOSED TO UNAUTHORIZED THIRD PARTIES WITHOUT THE WILLING CONSENT OF THE INDIVIDUAL TO WHOM THE INFORMATION PERTAINS;

(c) TO PROTECT INDIVIDUAL PRIVACY AND TO PRESERVE INDIVIDUAL AUTONOMY WITH REGARD TO THE INDIVIDUAL'S GENETIC INFORMATION, IT IS APPROPRIATE TO LIMIT THE USE AND AVAILABILITY OF GENETIC INFORMATION;

(d) THE INTENT OF THIS STATUTE IS TO PREVENT INFORMATION DERIVED FROM

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

GENETIC TESTING FROM BEING USED TO DENY ACCESS TO HEALTH CARE INSURANCE, GROUP DISABILITY INSURANCE, OR LONG-TERM CARE INSURANCE COVERAGE.

(2) FOR THE PURPOSES OF THIS SECTION:

(a) "ENTITY" MEANS ANY SICKNESS AND ACCIDENT INSURANCE COMPANY, HEALTH MAINTENANCE ORGANIZATION, NONPROFIT HOSPITAL, MEDICAL-SURGICAL AND HEALTH SERVICE CORPORATION, OR OTHER ENTITY THAT PROVIDES HEALTH CARE INSURANCE, GROUP DISABILITY INSURANCE, OR LONG-TERM CARE INSURANCE COVERAGE AND IS SUBJECT TO THE JURISDICTION OF THE COMMISSIONER OF INSURANCE.

(b) "GENETIC TESTING" MEANS ANY LABORATORY TEST OF HUMAN DNA, RNA, OR CHROMOSOMES THAT IS USED TO IDENTIFY THE PRESENCE OR ABSENCE OF ALTERATIONS IN GENETIC MATERIAL WHICH ARE ASSOCIATED WITH DISEASE OR ILLNESS. "GENETIC TESTING" INCLUDES ONLY SUCH TESTS AS ARE DIRECT MEASURES OF SUCH ALTERATIONS RATHER THAN INDIRECT MANIFESTATIONS THEREOF.

(3) (a) INFORMATION DERIVED FROM GENETIC TESTING SHALL BE CONFIDENTIAL AND PRIVILEGED. ANY RELEASE, FOR PURPOSES OTHER THAN DIAGNOSIS, TREATMENT, OR THERAPY, OF GENETIC TESTING INFORMATION THAT IDENTIFIES THE PERSON TESTED WITH THE TEST RESULTS RELEASED REQUIRES SPECIFIC WRITTEN CONSENT BY THE PERSON TESTED.

(b) ANY ENTITY THAT RECEIVES INFORMATION DERIVED FROM GENETIC TESTING MAY NOT SEEK, USE, OR KEEP THE INFORMATION FOR ANY NONTHERAPEUTIC PURPOSE OR FOR ANY UNDERWRITING PURPOSE CONNECTED WITH THE PROVISION OF HEALTH CARE INSURANCE, GROUP DISABILITY INSURANCE, OR LONG-TERM CARE INSURANCE COVERAGE.

(4) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (3) OF THIS SECTION, IN THE COURSE OF A CRIMINAL INVESTIGATION OR A CRIMINAL PROSECUTION, AND TO THE EXTENT ALLOWED UNDER THE FEDERAL OR STATE CONSTITUTION, ANY PEACE OFFICER, DISTRICT ATTORNEY, OR ASSISTANT ATTORNEY GENERAL, OR A DESIGNEE THEREOF, MAY OBTAIN INFORMATION DERIVED FROM GENETIC TESTING REGARDING THE IDENTITY OF ANY INDIVIDUAL WHO IS THE SUBJECT OF THE CRIMINAL INVESTIGATION OR PROSECUTION FOR USE EXCLUSIVELY IN THE CRIMINAL INVESTIGATION OR PROSECUTION WITHOUT THE CONSENT OF THE INDIVIDUAL BEING TESTED.

(5) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (3) OF THIS SECTION, ANY RESEARCH FACILITY MAY USE THE INFORMATION DERIVED FROM GENETIC TESTING FOR SCIENTIFIC RESEARCH PURPOSES SO LONG AS THE IDENTITY OF ANY INDIVIDUAL TO WHOM THE INFORMATION PERTAINS IS NOT DISCLOSED TO ANY THIRD PARTY; EXCEPT THAT THE INDIVIDUAL'S IDENTITY MAY BE DISCLOSED TO THE INDIVIDUAL'S PHYSICIAN IF THE INDIVIDUAL CONSENTS TO SUCH DISCLOSURE IN WRITING.

(6) THIS SECTION DOES NOT LIMIT THE AUTHORITY OF A COURT OR ANY PARTY TO A PARENTAGE PROCEEDING TO USE INFORMATION OBTAINED FROM GENETIC TESTING FOR PURPOSES OF DETERMINING PARENTAGE PURSUANT TO SECTION 13-25-126, C.R.S.

(7) THIS SECTION DOES NOT LIMIT THE AUTHORITY OF A COURT OR ANY PARTY TO A PROCEEDING THAT IS SUBJECT TO THE LIMITATIONS OF PART 5 OF ARTICLE 64 OF TITLE 13, C.R.S., TO USE INFORMATION OBTAINED FROM GENETIC TESTING FOR PURPOSES OF DETERMINING THE CAUSE OF DAMAGE OR INJURY.

(8) THIS SECTION DOES NOT LIMIT THE AUTHORITY OF THE STATE BOARD OF PAROLE TO REQUIRE ANY OFFENDER WHO IS INVOLVED IN A SEXUAL ASSAULT TO SUBMIT TO BLOOD TESTS AND TO RETAIN THE RESULTS OF SUCH TESTS ON FILE AS AUTHORIZED UNDER SECTION 17-2-201 (5) (g), C.R.S.

(9) THIS SECTION DOES NOT LIMIT THE AUTHORITY GRANTED THE STATE DEPARTMENT OF HEALTH, THE STATE BOARD OF HEALTH, OR LOCAL DEPARTMENTS OF HEALTH PURSUANT TO SECTION 25-1-122, C.R.S.

(10) THIS SECTION DOES NOT APPLY TO THE PROVISION OF LIFE INSURANCE OR INDIVIDUAL DISABILITY INSURANCE.

(11) ANY VIOLATION OF THIS SECTION IS AN "UNFAIR PRACTICE", AS DEFINED IN SECTION 10-3-1104 (1), AND IS SUBJECT TO THE PROVISIONS OF SECTIONS 10-3-1106 TO 10-3-1113.

(12) ANY INDIVIDUAL WHO IS INJURED BY AN ENTITY'S VIOLATION OF THIS SECTION MAY RECOVER IN A COURT OF COMPETENT JURISDICTION THE FOLLOWING REMEDIES:

(a) EQUITABLE RELIEF, WHICH MAY INCLUDE A RETROACTIVE ORDER, DIRECTING THE ENTITY TO PROVIDE HEALTH INSURANCE, GROUP DISABILITY INSURANCE, OR LONG-TERM CARE INSURANCE COVERAGE, WHICHEVER IS APPROPRIATE, TO THE INJURED INDIVIDUAL UNDER THE SAME TERMS AND CONDITIONS AS WOULD HAVE APPLIED HAD THE VIOLATION NOT OCCURRED; AND

(b) AN AMOUNT EQUAL TO ANY ACTUAL DAMAGES SUFFERED BY THE INDIVIDUAL AS A RESULT OF THE VIOLATION.

(13) THE PREVAILING PARTY IN AN ACTION UNDER THIS SECTION MAY RECOVER COSTS AND REASONABLE ATTORNEY FEES.

SECTION 2. The introductory portion to 10-3-1108 (1), Colorado Revised Statutes, 1987 Repl. Vol., is amended to read:

10-3-1108. Orders. (1) If, after a hearing conducted under section 10-3-1107, the commissioner determines that the person charged has engaged in an unfair method of competition or an unfair or deceptive act or practice, ~~he~~ THE COMMISSIONER shall reduce ~~his~~ THE findings to writing and shall issue and cause to be served on such person a copy of such findings and an order requiring such person to cease and desist from engaging in such method of competition, act, or practice, and, if such act or practice is a violation of section 10-3-1104, 10-3-1104.7, 10-3-1105, or 10-18-105, the commissioner may, at his OR HER discretion, order any one or more of the following:

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 2, 1994