

CHAPTER 262

INSURANCE

SENATE BILL 02-078

BY SENATOR(S) Hagedorn, Evans, Fitz-Gerald, Gordon, Hanna, Hernandez, Isgar, Nichol, Pascoe, Phillips, Tate, Teck, Tupa, and Windels;
also REPRESENTATIVE(S) Fritz, Boyd, Clapp, Coleman, Garcia, Groff, Jahn, Lawrence, Mace, Miller, Plant, Romanoff, Schultheis, Stafford, and Tochtrop.

AN ACT**CONCERNING GENETIC PRIVACY.**

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

SECTION 1. 10-3-1104.7 (10) and (12), Colorado Revised Statutes, are amended to read:

10-3-1104.7. Genetic testing - declaration - definitions - limitations on disclosure of information - liability - legislative declaration. (10) NOTWITHSTANDING ANY PROVISION OF THIS SECTION ~~DOES NOT~~ TO THE CONTRARY, THE ONLY REQUIREMENTS THAT SHALL APPLY TO THE PROVISION OF AN INSURER IN CONNECTION WITH life insurance or individual disability insurance ARE AS FOLLOWS:

(a) EXCEPT AS OTHERWISE SPECIFICALLY AUTHORIZED OR REQUIRED BY ANOTHER SECTION OF STATE OR FEDERAL LAW, AN INSURER SHALL NOT REQUIRE THE PERFORMANCE OF OR PERFORM A GENETIC TEST WITHOUT FIRST RECEIVING THE SPECIFIC, WRITTEN, INFORMED CONSENT OF THE SUBJECT OF THE TEST WHO HAS THE CAPACITY TO CONSENT OR, IF THE PERSON SUBJECT TO THE TEST LACKS THE CAPACITY TO CONSENT, OF A PERSON AUTHORIZED BY LAW TO CONSENT ON BEHALF OF THE SUBJECT OF THE TEST. WRITTEN CONSENT SHALL BE IN A FORM PRESCRIBED BY THE COMMISSIONER.

(b) THE RESULTS OF A GENETIC TEST PERFORMED PURSUANT TO THIS SUBSECTION (10) ARE PRIVILEGED AND CONFIDENTIAL AND SHALL NOT BE RELEASED TO ANY PERSON EXCEPT AS SPECIFICALLY AUTHORIZED UNDER APPLICABLE STATE OR FEDERAL LAW.

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

(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) THE GREATER OF:

(I) An amount equal to any actual damages suffered by the individual as a result of the violation; AND

(II) TEN THOUSAND DOLLARS PER VIOLATION.

SECTION 2. 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 1, 2002