

FIRST REGULAR SESSION

# SENATE BILL NO. 114

92ND GENERAL ASSEMBLY

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INTRODUCED BY SENATOR DOUGHERTY.

Pre-filed December 1, 2002, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

0063S.011

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## AN ACT

To repeal sections 375.1300, 375.1303, 375.1306, and 375.1309, RSMo, relating to genetic information and testing for insurance purposes, and to enact in lieu thereof four new sections relating to the same subject.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 375.1300, 375.1303, 375.1306 and 375.1309, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 375.1300, 375.1303, 375.1306, and 375.1309, to read as follows:

375.1300. When used in sections 375.1300 to [375.1312] **375.1309**, the following terms mean:

(1) "Consultant", an individual, partnership or corporation who, for a fee, holds himself or itself out to the public as engaged in the business of offering any advice, counsel, opinion or service with respect to the benefits, advantages or disadvantages promised under any policy of insurance that could be issued in this state;

(2) "Director", the director of the department of insurance of this state;

(3) "Genetic information", [the results of a genetic test. Genetic information shall not include family history, the results of routine physical measurements, or the results of chemical, blood, urine analysis, or the results of tests for drugs or the presence of the human immunodeficiency virus, or from results of any other tests commonly accepted in clinical practice at the time] **any gene, gene product, inherited characteristic or DNA sequence information about an individual including that which is derived from the alteration, mutilation or polymorphism of DNA, or the presence or absence of a specific DNA**

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

**marker;**

(4) "Genetic test", [a laboratory test of human deoxyribonucleic acid (DNA) or ribonucleic acid (RNA) used to identify the presence or absence of inherited alterations in the DNA or RNA which cause predisposition to disease or illness. The term does not include routine physical measurements and examinations, routine tests performed as a part of a physical examination, chemical, blood or urine analysis, cholesterol tests, tests for the presence of the human immunodeficiency virus, a test for drugs, or tests commonly accepted in clinical practice at the time] **a presymptomatic test of a person's genes, gene products, or chromosomes to determine 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 determined to be associated with a statistically increased risk of development of a disease or disorder. "Genetic test" does not include a cholesterol test or other test which is not conducted to determine the presence or absence of a person's gene or genes;**

(5) "Insurer", any person, reciprocal exchange, interinsurer, Lloyds insurer, fraternal benefit society, and any other legal entity engaged in the business of insurance, including agents, brokers, adjusters and third-party administrators. "Insurer" also includes health services corporations, health maintenance organizations, prepaid limited health care service plans, dental, optometry and other similar health service plans. For purposes of sections 375.930 to 375.948, such entities shall be deemed to be engaged in the business of insurance. "Insurer" shall also include all companies organized, incorporated or doing business pursuant to the provisions of chapters 325, 375, 376, 377, 378, 379, 381 and 383, RSMo;

(6) "Person", any natural or artificial entity, including, but not limited to, individuals, partnerships, associations, trusts or corporations;

(7) "Policy", "certificate" or "contract" includes any contract of insurance, indemnity, medical, health or hospital service, suretyship, or annuity issued, proposed for issuance, or intended for issuance by any insurer.

375.1303. 1. **Except as provided in subsection 2 of this section,** any insurer, in determining eligibility for coverage, establishing premiums, limiting coverage, renewing coverage or any other underwriting decision, shall not, in connection with the offer, sale or renewal of a health plan:

(1) Require or request a person or blood relative of such person to provide genetic information or take a genetic test;

(2) [Except as provided in subdivisions (3) and (4) of this subsection,] Inquire to determine whether a person or blood relative of such person has taken or refused a genetic test or what the results of any such test were;

(3) Consider [without the approval of such person] the fact that genetic information or

a genetic test was taken or refused by a person or blood relative of such person; or

(4) Consider [without the approval of such person genetic information or] the results of any genetic **information or** test taken by a person or blood relative of such person.

**2. No insurer may terminate, restrict, limit, or otherwise apply conditions to the coverage of, restrict the sale of, cancel or refuse to renew the coverage of, deny coverage or exclude an individual or family member from coverage, impose a rider that excludes certain benefits or services, establish differentials in premium rates or cost sharing for coverage under the policy or plan, otherwise discriminate against an individual or family member in the provision of insurance on the basis of any genetic information concerning an individual or family member, or on the basis of an individual's or family member's request for or receipt of genetic services.**

**3.** A violation of this section shall be subject to the provisions of sections 375.930 to 375.948 relating to unfair trade practices.

[3.] **4.** For purposes of this section, "health plan" does not include any policy, contract or certificate of life insurance, reinsurance, disability income or long-term care coverage. This section applies to applications for coverage made on or after [January 1, 1999] **August 28, 2003**, and to policies, contracts and certificates issued or renewed on or after such date to provide coverage to residents of this state.

375.1306. **1.** An employer shall not use any genetic information or genetic test results, as those terms are defined in subdivisions (3) and (4) of section 375.1300, of an employee or prospective employee to distinguish between, discriminate against, or restrict any right or benefit otherwise due or available to such employee or prospective employee. [The requirements of this section shall not prohibit:

(1) Underwriting in connection with individual or group life, disability income or long-term care insurance;

(2) Any action required or permissible by law or regulation;

(3) Action taken with the written permission of an employee or prospective employee or such person's authorized representative; or

(4) The use of genetic information when such information is directly related to a person's ability to perform assigned job responsibilities.]

**2. An employer shall not seek to obtain or obtain any genetic information or genetic test results of an employee or prospective employee.**

**3. An employer shall not require the collection of a DNA sample of an employee or prospective employee for analysis.**

**4.** Any person who violates the provisions of this section shall be fined not more than five hundred dollars for each violation of this section **and may be liable in a civil action for damages or equitable relief.**

375.1309. 1. Any person who, in the ordinary course of business, practice of a profession or rendering of a service, creates, stores, receives or furnishes genetic information, as such term is defined in subdivision (3) of section 375.1300, shall hold such information as confidential medical records and shall not disclose **by any means of communication** such genetic information **or test results** except pursuant to written authorization of the person to whom such information **or test results** pertains or to that person's authorized representative. The requirements of this section shall not apply to:

(1) Statistical data compiled without reference to the identity of an individual;

(2) Health research conducted in accordance with the provisions of the federal common rule protecting the rights and welfare of research participants (45 CFR 46 and 21 CFR 50 and 56), or to health research using medical archives or databases in which the identity of individuals is protected from disclosure by coding or encryption, or by removing all identities;

(3) The release of such information pursuant to legal or regulatory process; or

(4) The release of such information for body identification.

2. Any person who violates the provisions of this section shall be fined not more than five hundred dollars **and may be liable in a civil action for damages and equitable relief.**

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