

HB1338_L.002

SENATE COMMITTEE OF REFERENCE REPORT

 Chairman of Committee

 Date
Committee on Business, Labor and Technology.

After consideration on the merits, the Committee recommends the following:

HB09-1338 be amended as follows:

- 1 Amend reengrossed bill, page 2, line 2, strike "(2), (3)," and substitute
 2 "(2) (a), (3) (b),";
- 3 line 10, strike "statute" and substitute "statute SECTION" and strike
 4 "GENETIC";
- 5 strike lines 11 and 12 and substitute the following:
- 6 "derived from genetic testing from being used to deny access to health
 7 care insurance; group disability insurance";
- 8 Page 3, strike lines 1 through 4 and substitute the following:
- 9 "(a) "Entity" means any ~~sickness and accident insurance company,~~
 10 ~~health maintenance organization, nonprofit hospital, medical-surgical and~~
 11 ~~health service corporation, or other entity that provides health care~~
 12 ~~insurance; group disability insurance";~~
- 13 after line 6, insert the following:
- 14 "(3) (b) Any entity that receives information derived from genetic
 15 testing may not seek, use, or keep the information for any nontherapeutic
 16 purpose or for any underwriting purpose connected with the provision of
 17 ~~health care insurance; group disability insurance or long-term care~~
 18 ~~insurance coverage.~~



1 (12) Any individual who is injured by an entity's violation of this
2 section may recover in a court of competent jurisdiction the following
3 remedies:

4 (a) Equitable relief, which may include a retroactive order,
5 directing the entity to provide ~~health insurance~~, group disability insurance
6 or long-term care insurance coverage, whichever is appropriate, to the
7 injured individual under the same terms and conditions as would have
8 applied had the violation not occurred; and

9 **SECTION 2.** Part 11 of article 3 of title 10, Colorado Revised
10 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
11 read:

12 **10-3-1104.6. Genetic information - limitations on disclosure of**
13 **information - liability - definitions - legislative declaration.** (1) THE
14 GENERAL ASSEMBLY HEREBY FINDS AND DETERMINES THAT RECENT
15 ADVANCES IN GENETIC SCIENCE HAVE LED TO IMPROVEMENTS IN THE
16 DIAGNOSIS, TREATMENT, AND UNDERSTANDING OF A SIGNIFICANT NUMBER
17 OF HUMAN DISEASES. THE GENERAL ASSEMBLY FURTHER DECLARES THAT:

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

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

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

28 (d) THE INTENT OF THIS SECTION IS TO PREVENT GENETIC
29 INFORMATION FROM BEING USED TO DENY ACCESS TO HEALTH CARE
30 INSURANCE OR MEDICARE SUPPLEMENT INSURANCE COVERAGE.

31 (2) FOR THE PURPOSES OF THIS SECTION:

32 (a) "ENTITY" MEANS ANY SICKNESS AND ACCIDENT INSURANCE



1 COMPANY, HEALTH MAINTENANCE ORGANIZATION, NONPROFIT HOSPITAL,
2 MEDICAL-SURGICAL AND HEALTH SERVICE CORPORATION, OR OTHER
3 ENTITY THAT PROVIDES HEALTH CARE INSURANCE, OR MEDICARE
4 SUPPLEMENT INSURANCE COVERAGE AND IS SUBJECT TO THE JURISDICTION
5 OF THE COMMISSIONER OF INSURANCE."

6 Page 4, strike lines 2 through 8 and substitute the following:

7 "(e) (I) "GENETIC TEST" MEANS ANY ANALYSIS OF HUMAN DNA,
8 RNA, CHROMOSOMES, PROTEINS, OR METABOLITES THAT DETECTS
9 GENOTYPES, MUTATIONS, OR CHROMOSOMAL CHANGES.";

10 strike lines 25 through 27.

11 Page 5, strike lines 1 through 21 and substitute the following:

12 "(3) (a) GENETIC INFORMATION SHALL BE CONFIDENTIAL AND
13 PRIVILEGED. ANY RELEASE, FOR PURPOSES OTHER THAN DIAGNOSIS,
14 TREATMENT, OR THERAPY, OF GENETIC INFORMATION THAT IDENTIFIES THE
15 PERSON TESTED WITH THE TEST RESULTS RELEASED REQUIRES SPECIFIC
16 WRITTEN CONSENT BY THE PERSON ABOUT WHOM THE GENETIC
17 INFORMATION PERTAINS OR THE PARENT OR GUARDIAN OF THAT PERSON.

18 (b) ANY ENTITY THAT RECEIVES GENETIC INFORMATION MAY NOT
19 SEEK, USE, OR KEEP THE INFORMATION FOR ANY NONTHERAPEUTIC
20 PURPOSE OR FOR ANY UNDERWRITING PURPOSE CONNECTED WITH THE
21 PROVISION OF HEALTH CARE INSURANCE OR MEDICARE SUPPLEMENT
22 INSURANCE COVERAGE.

23 (c) AN ENTITY SHALL NOT REQUEST OR REQUIRE AN INDIVIDUAL OR
24 FAMILY MEMBER OF THE INDIVIDUAL TO UNDERGO A GENETIC TEST UNLESS
25 OTHERWISE AUTHORIZED BY APPLICABLE STATE OR FEDERAL LAW.

26 (4) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (3) OF
27 THIS SECTION, IN THE COURSE OF A CRIMINAL INVESTIGATION OR A
28 CRIMINAL PROSECUTION, AND TO THE EXTENT ALLOWED UNDER THE
29 FEDERAL OR STATE CONSTITUTION, ANY PEACE OFFICER, DISTRICT
30 ATTORNEY, OR ASSISTANT ATTORNEY GENERAL, OR A DESIGNEE THEREOF,
31 MAY OBTAIN GENETIC INFORMATION REGARDING THE IDENTITY OF ANY
32 INDIVIDUAL WHO IS THE SUBJECT OF THE CRIMINAL INVESTIGATION OR
33 PROSECUTION FOR USE EXCLUSIVELY IN THE CRIMINAL INVESTIGATION OR



1 PROSECUTION WITHOUT THE CONSENT OF THE INDIVIDUAL BEING TESTED.

2 (5) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (3) OF
3 THIS SECTION, ANY RESEARCH FACILITY MAY USE GENETIC INFORMATION
4 FOR SCIENTIFIC RESEARCH PURPOSES IF THE IDENTITY OF ANY INDIVIDUAL
5 TO WHOM THE INFORMATION PERTAINS IS NOT DISCLOSED TO ANY THIRD
6 PARTY; EXCEPT THAT THE INDIVIDUAL'S IDENTITY MAY BE DISCLOSED TO
7 THE INDIVIDUAL'S PHYSICIAN IF THE INDIVIDUAL CONSENTS TO THE
8 DISCLOSURE IN WRITING.

9 (6) THIS SECTION DOES NOT LIMIT THE AUTHORITY OF A COURT OR
10 ANY PARTY TO A PARENTAGE PROCEEDING TO USE GENETIC INFORMATION
11 FOR PURPOSES OF DETERMINING PARENTAGE PURSUANT TO SECTION
12 13-25-126, C.R.S.

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

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

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

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

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

32 (a) EQUITABLE RELIEF, WHICH MAY INCLUDE A RETROACTIVE
33 ORDER, DIRECTING THE ENTITY TO PROVIDE HEALTH INSURANCE OR



1 MEDICARE SUPPLEMENT INSURANCE COVERAGE, WHICHEVER IS
2 APPROPRIATE, TO THE INJURED INDIVIDUAL UNDER THE SAME TERMS AND
3 CONDITIONS AS WOULD HAVE APPLIED HAD THE VIOLATION NOT
4 OCCURRED; AND

5 (b) THE GREATER OF:

6 (I) AN AMOUNT EQUAL TO ANY ACTUAL DAMAGES SUFFERED BY
7 THE INDIVIDUAL AS A RESULT OF THE VIOLATION; OR

8 (II) TEN THOUSAND DOLLARS PER VIOLATION.

9 (12) THE PREVAILING PARTY IN AN ACTION UNDER THIS SECTION
10 MAY RECOVER COSTS AND REASONABLE ATTORNEY FEES.";

11 line 22, strike "**SECTION 2.**" and substitute "**SECTION 3.**".

12 Renumber succeeding sections accordingly.

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