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DELAWARE STATE SENATE  
150th GENERAL ASSEMBLY

SENATE BILL NO. 17

AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE RELATING TO GENETICS BASED  
DISCRIMINATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend § 2317, Title 18 of the Delaware Code by making deletions as shown by strike through and  
2 insertions as shown by underline as follows:

3 § 2317. Genetics based discrimination.

4 (a) As used in this section:

5 (1) "Genetic characteristic" means any inherited gene or chromosome, or alteration thereof, that is  
6 scientifically or medically believed to predispose an individual to a disease, ~~disorder-disorder~~, or syndrome, or to be  
7 associated with a statistically significant increased risk of development of a disease, ~~disorder-disorder~~, or syndrome.

8 (2) "Genetic information" means information about inherited genes or chromosomes, and of alterations  
9 thereof, whether obtained from an individual or family member, that is scientifically or medically believed to  
10 predispose an individual to disease, disorder or syndrome, or believed to be associated with a statistically significant  
11 increased risk of development of a disease, disorder or syndrome. This ~~includes, but is not limited to,~~ includes  
12 information regarding carrier status, information regarding an increased likelihood of future disease or increased  
13 sensitivity to any substance, information derived from laboratory tests that identify mutations in specific genes or  
14 chromosomes, requests for genetic services or counseling, tests of gene products, and direct analysis of genes or  
15 chromosomes.

16 (3) "Genetic test" means a test for determining the presence or absence of an inherited genetic characteristic in  
17 an individual, including tests of nucleic acids such as DNA, RNA and mitochondrial DNA, chromosomes or proteins  
18 in order to identify a predisposing genetic characteristic associated with disease, disorder or syndrome.

19 (4) "Insurance" means health coverage as defined in this title or in regulations promulgated by the Insurance  
20 ~~Commissioner, not including disability insurance or long term care insurance.~~ Commissioner.

21 (b) No person shall unfairly discriminate against any individual in the issuance, ~~denial~~ withholding, denial,  
22 extension, or renewal of or in the fixing of the rates, terms-terms, or conditions for insurance as defined in paragraph (a)(4)  
23 of this section, based on any genetic characteristic, genetic information, or the result of any genetic test. For purposes of  
24 this section, unfair discrimination includes the application of the results of a genetic test in a manner that is not reasonably  
25 related to anticipated claims experience.

26 (c) If a genetic test is required by an insurer, an insurer must do all of the following:

27 (1) Notify an individual, who is the subject of the genetic test, in writing that the test is required.

28 (2) Obtain written authorization from an individual prior to the administration of the test. The written  
29 authorization must indicate if the individual wishes to be informed of the test results and if the insurer is  
30 authorized to provide the test results, along with a written interpretation of the results by a qualified professional,  
31 to the individual or a health care practitioner designated by the individual.

32 (3) If requested in writing by the individual, provide the individual or the health care practitioner  
33 designated by the individual with the test results and a written interpretation of the results by a qualified  
34 professional.

35 ~~(e)-(d)~~ No cause of action in the nature of defamation, invasion of privacy or negligence shall arise against any  
36 person for disclosing personal or privileged information in accordance with this section, nor shall such a cause of action  
37 arise against any person for furnishing personal or privileged information to an insurance institution, agent or insurance  
38 support organization; provided however, that this section shall provide no immunity for disclosing or furnishing false  
39 information with malice or wilful intent to injure any person. Additionally, no person shall be found in violation of this  
40 section because the person receives genetic information or the results of a genetic test through inadvertent disclosure by a  
41 medical professional.

#### SYNOPSIS

The use of genetic information in disqualifying coverage for non-health insurance products, such as disability insurance and long term care insurance, is a gap in the protection provided by the federal Genetic Information Nondiscrimination Act. As a result, patients who seek genetic counseling to determine whether they may be at risk for certain diseases, such as genetic testing for the BRCA gene to determine predisposition for breast and prostate cancers, are cautioned that a positive result could result in the person being denied insurance. The potential denial of insurance has a chilling effect on patients seeking genetic testing, blocking them from being proactive by putting in place a preventative care plan that would reduce the likelihood of them getting the specific disease in the future.

This Act follows the lead of other states and prohibits discrimination based upon genetic characteristics and information in the issuance or renewal of disability and long term care insurance.

This Act also provides a notice requirement if an insurer requires a genetic test.

This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Author: Senator Hansen