STATE OF NEW YORK

10229

IN ASSEMBLY

March 26, 2018

Introduced by M. of A. DINOWITZ -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law, in relation to prohibiting insurance companies from discriminating based on genetic testing results

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The insurance law is amended by adding a new section 2616 to read as follows:

§ 2616. Discrimination based on genetic testing. (a) For purposes of this section:

(1) "Genetic information" means a written recorded individually identifiable result of a genetic test as defined by this section or explanation of such a result. For the purpose of this section, the term genetic information shall not include information pertaining to the abuse of drugs or alcohol which is derived from tests given for the exclusive purpose of determining the abuse of drugs or alcohol.

(2) "Genetic test" means a test of human DNA, RNA, mitochondrial DNA, chromosomes or proteins for the purpose of identifying genes, inherited or acquired genetic abnormalities, or the presence of absence of inherited or acquired characteristics in genetic material, which are associated with a predisposition to disease, illness, impairment or other disease processes. For the purpose of this section, the term genetic test shall not include tests given for drugs, alcohol, cholesterol, or HIV; any test for the purpose of diagnosing or detecting an existing disease process; any test performed due to the presence of symptoms, signs or other manifestation of a disease, illness, impairment; or other disease process or any test, that is taken as a biopsy, autopsy, or clinical specimen solely for the purpose of conducting an immediate clinical or diagnostic test that is not a test of DNA, RNA, mitochondrial DNA, chromosomes or proteins.

(b) No insurer doing business in this state, and no officer or agent of such insurer and no licensed insurance broker, and no employee or other representative of such insurer, agent or broker shall:

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD15246-02-8

(1) practice unfair discrimination against persons because of the results of a genetic test or the provision of genetic information, as defined in this section. For purposes of this section, unfair discrimination means cancellation, refusing to issue or renew, charging any increased rate, restricting any length of coverage or in any way practicing discrimination against persons unless such action is taken pursuant to reliable information relating to the insured's mortality or morbidity, based on sound actuarial principles or actual or reasonably anticipated claim experience;

(2) require an applicant to undergo a genetic test as a condition of the issuance or renewal of a policy on the lives of persons in the state. Any violation of this section shall constitute an unfair method of competition or unfair or deceptive act or practice under section two thousand four hundred three of this chapter;

(3) require an applicant to answer any questions concerning genetic testing. Any application requesting this information must contain or be accompanied by language informing the applicant that the applicant is not required to answer any questions in connection with genetic testing or information as defined in this section and language informing the applicant that the failure to do so may result in an increased rate or denial of coverage. If the applicant chooses to submit genetic information, the insurer is authorized to use that information to set the terms of a policy provided that such information is reliable information relating to the insured's mortality or morbidity, based on sound actuarial principles, or actual or reasonably anticipated experience.

(c) If the superintendent has reason to believe that such unfair discrimination described in this section has occurred, and that a proceeding by the superintendent would be in the interest of the public, the superintendent shall conduct a hearing pursuant to section two thousand four hundred five of this chapter. Upon a determination that the practice or act of the insurer is in conflict with the provisions of this section, the superintendent shall issue an order requiring the insurers to cease and desist from engaging in the practice or act and may order payment of a penalty pursuant to section two thousand four hundred four of this chapter.

(d) Upon determination that the practice or act of the insurer is in conflict with the provisions of this section, the superintendent, in consultation with the department of health, shall hold a public hearing and may, by order, determine, based on sound actuarial principles or actual or reasonably anticipated claim experience, that the genetic test which is the subject of the cease and desist order provides no reliable information relating to the insured's mortality or morbidity and that its use would constitute unfair discrimination. At least annually, the superintendent shall review any such order to assure that any such determination remains current and shall amend or rescind the order to reflect any change in the determination. The superintendent, in consultation with the department of health, may issue an advisory opinion on whether a genetic test provides no reliable information relating to the insured's mortality or morbidity, based on sound actuarial principles or actual or reasonably anticipated claim experience.

(e) The superintendent may promulgate rules and regulations pursuant to this section.

§ 2. This act shall take effect immediately.