

# 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:

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

3 § 2616. Discrimination based on genetic testing. (a) For purposes of  
4 this section:

5 (1) "Genetic information" means a written recorded individually iden-  
6 tifiable result of a genetic test as defined by this section or explana-  
7 tion of such a result. For the purpose of this section, the term genetic  
8 information shall not include information pertaining to the abuse of  
9 drugs or alcohol which is derived from tests given for the exclusive  
10 purpose of determining the abuse of drugs or alcohol.

11 (2) "Genetic test" means a test of human DNA, RNA, mitochondrial DNA,  
12 chromosomes or proteins for the purpose of identifying genes, inherited  
13 or acquired genetic abnormalities, or the presence of absence of inher-  
14 ited or acquired characteristics in genetic material, which are associ-  
15 ated with a predisposition to disease, illness, impairment or other  
16 disease processes. For the purpose of this section, the term genetic  
17 test shall not include tests given for drugs, alcohol, cholesterol, or  
18 HIV; any test for the purpose of diagnosing or detecting an existing  
19 disease process; any test performed due to the presence of symptoms,  
20 signs or other manifestation of a disease, illness, impairment; or other  
21 disease process or any test, that is taken as a biopsy, autopsy, or  
22 clinical specimen solely for the purpose of conducting an immediate  
23 clinical or diagnostic test that is not a test of DNA, RNA, mitochondri-  
24 al DNA, chromosomes or proteins.

25 (b) No insurer doing business in this state, and no officer or agent  
26 of such insurer and no licensed insurance broker, and no employee or  
27 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     (1) practice unfair discrimination against persons because of the  
2 results of a genetic test or the provision of genetic information, as  
3 defined in this section. For purposes of this section, unfair discrimi-  
4 nation means cancellation, refusing to issue or renew, charging any  
5 increased rate, restricting any length of coverage or in any way prac-  
6 ticing discrimination against persons unless such action is taken pursu-  
7 ant to reliable information relating to the insured's mortality or  
8 morbidity, based on sound actuarial principles or actual or reasonably  
9 anticipated claim experience;

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

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

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

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

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

53    § 2. This act shall take effect immediately.