

By: Representative Fleming

To: Insurance

HOUSE BILL NO. 64

1 AN ACT TO PREVENT GENETIC DISCRIMINATION IN HEALTH INSURANCE;  
 2 TO PROVIDE FOR LEGISLATIVE FINDINGS AND THE PURPOSE OF THIS ACT;  
 3 TO DEFINE CERTAIN TERMS; TO PROHIBIT THE USE OF GENETIC  
 4 INFORMATION BY EMPLOYERS; TO PROHIBIT MANDATORY GENETIC TESTING;  
 5 TO PROHIBIT THE COLLECTION OF GENETIC INFORMATION; TO PROHIBIT THE  
 6 DISCLOSURE OF GENETIC INFORMATION WITHOUT CONSENT; TO PROVIDE FOR  
 7 ENFORCEMENT AND PENALTIES UNDER THIS ACT; AND FOR RELATED  
 8 PURPOSES.

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

10 **SECTION 1.** (1) The Legislature hereby finds and declares  
 11 the following:

12 (a) The collection, retention, use and dissemination of  
 13 genetic information can threaten the right to privacy of  
 14 individuals and members of their families;

15 (b) Analysis of an individual's DNA provides  
 16 information not only about an individual, but also about that  
 17 individual's parents, siblings and children, thus implicating  
 18 family privacy;

19 (c) Improper disclosure of genetic information can lead  
 20 to significant harm to the individual, including stigmatization  
 21 and discrimination in health insurance; and

22 (d) Genetic information is uniquely private and  
 23 personal information that should not be collected or disclosed  
 24 without the individual's written authorization and informed  
 25 consent.

26 (2) The purpose of this act is:

27 (a) To protect the confidentiality of genetic  
 28 information.

29 (b) To regulate the collection, retention, disclosure,  
 30 or use of genetic information.

31 (c) To protect against discrimination by an insurer  
32 based upon the genetic information of an individual or his/her  
33 family members.

34 **SECTION 2.** The following words and phrases shall have the  
35 meanings ascribed herein unless the context clearly indicates  
36 otherwise:

37 (a) "Genetic information" means information about  
38 genes, gene products or inherited characteristics that can be  
39 derived from an individual or family member of the individual.

40 (b) "Genetic test" means any medical or scientific test  
41 used to seek genetic information, including, but not limited to,  
42 direct DNA analysis, chromosomal analysis or tests for the  
43 presence or absence of gene products.

44 (c) "Insurer" means a company or a representative of a  
45 company that provides health insurance.

46 **SECTION 3.** No insurer shall:

47 (a) Refuse to enroll any person or accept any person or  
48 any person's family member as a subscriber on the basis of the  
49 genetic information of that person or of their family members;

50 (b) Determine a rate on the basis of the genetic  
51 information of that person or of their family members or an  
52 individual's request for information;

53 (c) Offer or provide different terms, conditions or  
54 benefits on the basis of the genetic information of that person or  
55 of their family members; or

56 (d) Otherwise consider genetic information in the  
57 provision of insurance coverage or benefits.

58 **SECTION 4.** No insurer shall:

59 (a) Require or request that any individual or a member  
60 of an individual's family undergo a genetic test; or

61 (b) Offer inducements for genetic testing.

62 **SECTION 5.** No insurer shall:

63           (a) Require or request that any individual or a member  
64 of the individual's family reveal whether the individual or a  
65 member of the individual's family has obtained a genetic test or  
66 what the results of the test were; or

67           (b) Otherwise seek, receive or maintain any genetic  
68 information.

69           **SECTION 6.** (1) Genetic information, including, but not  
70 limited to, genetic test results, shall be confidential and  
71 privileged and shall not be released except to the individual  
72 tested and to persons specifically authorized by such individual  
73 to receive the information after prior written and informed  
74 consent.

75           (2) No one may disclose genetic information of any kind  
76 without obtaining written informed consent for each disclosure.  
77 This right may not be waived.

78           (3) No person may sell to or interpret for an insurer a  
79 genetic test of an insured person.

80           (4) A general authorization for the release of medical  
81 records or medical information shall not be construed as an  
82 authorization for disclosure of genetic information.  
83 Authorizations for the release of genetic information and for any  
84 genetic test must, without exception, include specific, informed  
85 consent for each instance of disclosure and for each test  
86 performed.

87           **SECTION 7.** (1) Any person aggrieved by a violation of this  
88 act shall have a cause of action against the person or institution  
89 who committed such violation and may recover compensatory damages  
90 or equitable relief or both. Compensatory damages shall be in an  
91 amount equal to the actual damages suffered by the aggrieved  
92 person or One Thousand Dollars (\$1,000.00), whichever is greater.  
93 If the court finds that a person or institution in violation of  
94 this act knew or should have known that such conduct was in  
95 violation of this act, the court may award up to three (3) but not

96 less than two (2) times the amount of actual damages suffered by  
97 the aggrieved individual.

98 (2) If the Attorney General has reason to believe that a  
99 person or institution is violating or intends to violate the  
100 provisions of this act, he or she may bring an action in the name  
101 of the state against such person or institution to obtain  
102 equitable relief or damages or both for any individual aggrieved  
103 by a violation of this act.

104 (3) If the court finds that a person or institution has  
105 inadvertently violated this act, the court may require such person  
106 or institution to pay a civil penalty of One Thousand Dollars  
107 (\$1,000.00) per violation. If the court finds that a person or  
108 institution is in willful violation of this act, the court may  
109 require such person or institution to pay a civil penalty of Five  
110 Thousand Dollars (\$5,000.00) per violation. The court may award  
111 the reasonable costs of investigation and litigation of a  
112 violation of this act, including reasonable attorney fees.

113 (4) Nothing in this act shall be construed as limiting or  
114 prohibiting the pursuit of any other remedies available under  
115 common or statutory law in regard to genetic information privacy.

116 **SECTION 8.** This act shall take effect and be in force from  
117 and after July 1, 2004.