

By: Representative Fleming

To: Insurance

HOUSE BILL NO. 154

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, institution
89 or other entity, that committed such violation and may recover
90 compensatory damages or equitable relief or both. Compensatory
91 damages shall be in an amount equal to the actual damages suffered
92 by the aggrieved person or One Thousand Dollars (\$1,000.00),
93 whichever is greater. If the court finds that a person,
94 institution or other entity, in violation of this act knew or
95 should have known that such conduct was in violation of this act,

96 the court may award up to three (3) but not less than two (2)
97 times the amount of actual damages suffered by the aggrieved
98 individual.

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

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

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

118 **SECTION 8.** This act shall take effect and be in force from
119 and after July 1, 2006.