

1 HOUSE BILL NO. 111

2 INTRODUCED BY M. GUGGENHEIM, L. SOFT, D. GRIMES

3 BY REQUEST OF THE STATE AUDITOR

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING STANDARDS FOR THE COLLECTION, USE, AND
6 DISCLOSURE OF GENETIC INFORMATION IN ISSUING INSURANCE; PROHIBITING INSURERS FROM
7 REQUIRING GENETIC TESTING EXCEPT AS OTHERWISE REQUIRED BY LAW; PROHIBITING
8 DISCRIMINATION ON THE BASIS OF GENETIC TRAITS BY INSURERS, HEALTH SERVICE
9 CORPORATIONS, HEALTH MAINTENANCE ORGANIZATIONS, FRATERNAL BENEFIT SOCIETIES, AND
10 OTHER ISSUERS OF INDIVIDUAL OR GROUP POLICIES OR CERTIFICATES OF INSURANCE;
11 PROHIBITING THE SOLICITATION OF GENETIC INFORMATION FOR NONTHERAPEUTIC PURPOSES;
12 ~~PROVIDING CIVIL AND CRIMINAL PENALTIES FOR UNAUTHORIZED DISCLOSURE OF GENETIC TEST~~
13 ~~RESULTS; AND AMENDING SECTIONS 2-18-812, 33-18-206, AND 33-31-111, MCA."~~

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16
17 **Section 1.** Section 2-18-812, MCA, is amended to read:

18 **"2-18-812. Alternatives to conventional insurance for providing state employee group benefits**
19 **authorized -- requirements.** The department may establish alternatives to conventional insurance for providing
20 state employee group benefits. The requirements for providing alternatives to conventional insurance are as
21 follows:

22 (1) The department shall maintain state employee group benefit plans on an actuarially sound basis.

23 (2) The department shall maintain reserves sufficient to liquidate the unrevealed claims liability and other
24 liabilities of state employee group benefit plans.

25 (3) The department shall deposit all reserve funds and premiums paid to a state employee group benefit
26 plan, and the deposits must be expended for claims under the plan.

27 (4) The department shall deposit income earned from the investment of a state employee group benefit
28 plan's reserve fund into the account established under subsection (3) in order to offset the costs of administering
29 the plan. Expenditures for actual and necessary expenses required for the efficient administration of the plan must
30 be made from temporary appropriations, as described in 17-7-501(1) or (2), made for that purpose.

1 (5) The department shall, prior to implementation of any alternative to conventional insurance, present
 2 to the advisory council the evidence upon which the department has concluded that the alternative method will
 3 be more efficient, less costly, or otherwise superior to contracting for conventional insurance.

4 (6) ~~The~~ Except as otherwise provided in [sections 4 3 through 8-7 6], the provisions of Title 33 do not
 5 apply to the department when exercising the powers and duties provided for in this section."
 6

7 ~~Section 2. Section 33-18-206, MCA, is amended to read:~~

8 ~~"33-18-206. Unfair discrimination prohibited -- life insurance, annuities, and disability insurance.~~

9 (1) ~~No A person shall may not make or permit any unfair discrimination between individuals of the same class
 10 and equal expectation of life in the rates charged for any a contract of life insurance or of life annuity or in the
 11 dividends or other benefits payable thereon on the contractor annuity or in any other of the terms and conditions
 12 of such the contract or annuity.~~

13 (2) ~~No A person shall may not make or permit any unfair discrimination between individuals of the same
 14 class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any a policy
 15 or contract of disability insurance or in the benefits payable thereunder under the policy or contract or in any of
 16 the terms or conditions of such the contract or in any other manner whatever.~~

17 (3) ~~An insurer may not refuse to consider an application for life or disability insurance on the basis of a
 18 genetic condition, developmental delay, or developmental disability.~~

19 (4) ~~The rejection of an application or the determining of rates, terms, or conditions of a life or disability
 20 insurance contract on the basis of genetic condition, developmental delay, or developmental disability constitutes
 21 unfair discrimination unless the applicant's medical condition and history and either claims experience or actuarial
 22 projections establish that substantial differences in claims are likely to result from the genetic condition,
 23 developmental delay, or developmental disability.~~

24 (5) ~~As used in this section, the following definitions apply:~~

25 (a) ~~"Developmental delay" means a delay of at least 1 1/2 standard deviations from the norm.~~

26 (b) ~~"Developmental disability" means the singular of developmental disabilities as defined in 53-20-202.~~

27 (c) ~~"Genetic condition" means a specific chromosomal or single-gene genetic condition."~~

28
 29 **Section 2.** Section 33-31-111, MCA, is amended to read:

30 **"33-31-111. Statutory construction and relationship to other laws.** (1) Except as otherwise provided

1 in this chapter, the insurance or health service corporation laws do not apply to ~~any a~~ health maintenance
 2 organization authorized to transact business under this chapter. This provision does not apply to an insurer or
 3 health service corporation licensed and regulated pursuant to the insurance or health service corporation laws
 4 of this state except with respect to its health maintenance organization activities authorized and regulated
 5 pursuant to this chapter.

6 (2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its
 7 representatives is not a violation of any law relating to solicitation or advertising by health professionals.

8 (3) A health maintenance organization authorized under this chapter is not practicing medicine and is
 9 exempt from Title 37, chapter 3, relating to the practice of medicine.

10 (4) This chapter does not exempt a health maintenance organization from the applicable certificate of
 11 need requirements under Title 50, chapter 5, parts 1 and 3.

12 (5) This section does not exempt a health maintenance organization from the prohibition of pecuniary
 13 interest under 33-3-308 or the material transaction disclosure requirements under 33-3-701 through 33-3-704.
 14 A health maintenance organization must be considered an insurer for the purposes of 33-3-308 and 33-3-701
 15 through 33-3-704.

16 (6) This section does not exempt a health maintenance organization from:

17 (a) prohibitions against interference with certain communications as provided under chapter 1, part 8;

18 (b) the provisions of Title 33, chapter 22, part 19;

19 (c) the requirements of 33-22-134 and 33-22-135; ~~or~~

20 (d) network adequacy and quality assurance requirements provided under chapter 36; ~~or~~

21 (e) the requirements of [sections 4 3 through 8-7 6].

22 (7) Sections 33-22-141, 33-22-142, 33-22-246, 33-22-247, 33-22-514, 33-22-523, 33-22-524, and
 23 33-22-526 apply to health maintenance organizations."

24

25 **NEW SECTION. Section 3. Definitions.** Unless the context indicates otherwise, the following definitions
 26 apply to [sections 4 3 through 8-7 6]:

27 (1) "Genetic information" means, UNLESS OTHERWISE PROVIDED BY PUBLIC LAW 104-191, information
 28 derived from genetic testing or medical evaluation, ~~excluding routine medical examinations, laboratory testing,~~
 29 ~~and imaging, unless the routine procedures, INCLUDING FAMILY HISTORY, were collected, conducted, or analyzed~~
 30 ~~purposefully to determine the presence or absence of a genetic trait in an individual or family~~ TO DETERMINE THE

1 PRESENCE OR ABSENCE OF VARIATIONS OR MUTATIONS, INCLUDING CARRIER STATUS, IN AN INDIVIDUAL'S GENETIC
 2 MATERIAL OR GENES THAT ARE SCIENTIFICALLY OR MEDICALLY BELIEVED TO CAUSE A DISEASE, DISORDER, OR SYNDROME
 3 OR ARE ASSOCIATED WITH A STATISTICALLY INCREASED RISK OF DEVELOPING A DISEASE, DISORDER, OR SYNDROME THAT
 4 IS ASYMPTOMATIC AT THE TIME OF TESTING.

5 (2) ~~(a)~~ "Genetic testing" or "genetic test" means a test used to diagnose a PRESYMPTOMATIC genetic trait
 6 FACTOR, including ~~but not limited to~~ analysis of human deoxyribonucleic acid or ribonucleic acid, chromosomes,
 7 proteins, or metabolites. THE TERM DOES NOT INCLUDE A ROUTINE PHYSICAL EXAMINATION OR A CHEMICAL, BLOOD, OR
 8 URINE ANALYSIS, UNLESS CONDUCTED OR ANALYZED PURPOSEFULLY OR KNOWINGLY TO OBTAIN GENETIC INFORMATION,
 9 OR A FAMILY HISTORY.

10 ~~———— (b) The term does not include:~~

11 ~~———— (i) a test, examination, or analysis that reports on an individual's current condition unless the test,~~
 12 ~~examination, or analysis is designed or intended to be specifically determinative for the presence or absence of~~
 13 ~~a genetic trait in an individual or family; or~~

14 ~~———— (ii) a test, examination, or analysis, including but not limited to analysis of human deoxyribonucleic acid~~
 15 ~~or ribonucleic acid, chromosomes, proteins or metabolites, that is diagnostic or predictive of a particular heritable~~
 16 ~~disease or disorder if, in accordance with generally accepted standards in the medical community, the genetic~~
 17 ~~trait has already manifested itself in the individual by causing a disease, disorder, medical condition, or symptoms~~
 18 ~~highly predictive of the disease, disorder, or medical condition.~~

19 (3) "Genetic trait" means any medically or scientifically identified genetic factor, known OR PRESUMED to
 20 be present in the individual or a biological relative but not presently associated with any manifestations of the
 21 disorder in the individual, that could cause a disorder or be statistically associated with an increased risk of
 22 development of a disorder.

23 (4) "Group policy" includes:

24 (a) the group insurance program authorized by Title 2, chapter 18, part 7;

25 (b) the state employee group insurance program required by Title 2, chapter 18, part 8; and

26 (c) a self-funded multiple employer welfare arrangement that is not regulated pursuant to the Employee
 27 Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq.

28

29 NEW SECTION. Section 4. Requirement for genetic testing -- limitations. (1) An insurer, health
 30 service corporation, health maintenance organization, fraternal benefit society, or other issuer of an individual

1 or group policy or certificate of insurance may not require an individual to obtain a genetic test unless the test is
 2 otherwise required by law for reasons including but not limited to the following:

3 ~~(1)~~(A) to establish parentage;

4 ~~(2)~~(B) to determine the presence of metabolic disorders in a newborn by testing conducted pursuant to
 5 newborn screening and protocols;

6 ~~(3)~~(C) in connection with a criminal investigation or prosecution; or

7 ~~(4)~~(D) for remains identification.

8 (2) THIS SECTION DOES NOT APPLY TO TRANSACTIONS OF LIFE, DISABILITY INCOME, OR LONG-TERM CARE
 9 INSURANCE.

10

11 NEW SECTION. Section 5. Discrimination on basis of genetic traits prohibited. (1) Unless
 12 otherwise required by law, an insurer, health service corporation, health maintenance organization, fraternal
 13 benefit society, or other issuer of an individual or group policy or certificate of insurance may not, on the basis
 14 of a person's genetic traits:

15 (a) fail or refuse to accept an application for a policy or certificate of insurance;

16 (b) fail or refuse to issue a policy or certificate of insurance to an applicant;

17 (c) cancel a policy or certificate of insurance;

18 (d) refuse to renew a policy or certificate of insurance;

19 (e) charge a higher rate or premium for a policy or certificate of insurance; or

20 (f) offer or provide different terms, conditions, or benefits, or place a limitation on coverage under a policy
 21 or certificate of insurance.

22 (2) An insurer, health service corporation, health maintenance organization, fraternal benefit society, or
 23 other issuer of an individual or group policy or certificate of insurance may not underwrite or condition coverage
 24 on the basis of:

25 (a) a requirement or agreement that the individual undergo genetic testing; or

26 (b) genetic information about a member of the individual's family.

27 (3) Discrimination may not be made in the fees or commissions of agents or brokers for writing or
 28 renewing an individual or group policy of insurance on the basis of an individual's genetic traits.

29 (4) THIS SECTION DOES NOT APPLY TO TRANSACTIONS OF LIFE, DISABILITY INCOME, OR LONG-TERM CARE
 30 INSURANCE.

1 (5) THIS SECTION DOES NOT PROHIBIT AN INSURER, HEALTH SERVICE CORPORATION, HEALTH MAINTENANCE
 2 ORGANIZATION, FRATERNAL BENEFIT SOCIETY, OR OTHER ISSUER OF AN INDIVIDUAL OR GROUP POLICY OR CERTIFICATE
 3 OF INSURANCE FROM DISCRIMINATING AS OTHERWISE ALLOWED BY LAW ON THE BASIS OF OTHER FACTORS UNRELATED
 4 TO GENETIC TRAITS.

5
 6 NEW SECTION. Section 6. Seeking genetic information for nontherapeutic purposes prohibited.

7 (1) An insurer, health service corporation, health maintenance organization, fraternal benefit society, or other
 8 issuer of an individual or group policy or certificate of insurance may not seek genetic information about an
 9 individual for a purpose that is:

10 ~~(1)(A)~~ unrelated to assessing or managing the individual's current health; ~~or~~

11 ~~(2)(B)~~ inappropriate in an asymptomatic individual; OR

12 (C) UNRELATED TO RESEARCH IN WHICH A SUBJECT IS NOT PERSONALLY IDENTIFIABLE.

13 (2) THIS SECTION DOES NOT APPLY TO TRANSACTIONS OF LIFE, DISABILITY INCOME, OR LONG-TERM CARE
 14 INSURANCE.

15
 16 ~~NEW SECTION. Section 8. Disclosure of genetic test results prohibited -- exception -- civil and~~
 17 ~~criminal penalties. (1) A person who negligently discloses results of a test for a genetic trait to another person~~
 18 ~~in a manner that identifies or provides identifying characteristics of the individual to whom the test results apply,~~
 19 ~~except pursuant to a written authorization, as provided in subsection (6), must be assessed a civil penalty in an~~
 20 ~~amount not to exceed \$1,000 plus costs, as provided in Title 25, chapter 10, part 2. The penalty and costs must~~
 21 ~~be paid to the subject of the test.~~

22 ~~(2) A person who willfully discloses the results of a test for a genetic trait to another person in a manner~~
 23 ~~that identifies or provides identifying characteristics of the individual to whom the test results apply, except~~
 24 ~~pursuant to a written authorization, as provided in subsection (6), shall be assessed a civil penalty in an amount~~
 25 ~~not less than \$1,000 and not more than \$5,000 plus costs, as provided in Title 25, chapter 10, part 2. The penalty~~
 26 ~~and costs must be paid to the subject of the test.~~

27 ~~(3) A person who willfully or negligently discloses the results of a test for a genetic trait to another person~~
 28 ~~in a manner that identifies or provides identifying characteristics of the individual to whom the test results apply,~~
 29 ~~except pursuant to a written authorization, as provided in subsection (6), and the disclosure results in economic,~~
 30 ~~bodily, or emotional harm to the subject of the test, is guilty of a misdemeanor punishable by a fine not to exceed~~

1 \$10,000.

2 ~~———— (4) In addition to the civil penalties provided in subsections (1) and (2), a person who makes a disclosure~~
 3 ~~prohibited by subsection (1) or (2) is liable to the individual who is the subject of the test for all actual damages,~~
 4 ~~including damages for economic, bodily, or emotional harm, that are proximately caused by the act.~~

5 ~~(5) Each disclosure made in violation of one or more subsections of this section is a separate civil wrong, criminal~~
 6 ~~offense, or both.~~

7 ~~———— (6) "Written authorization", as used in this section, means a document that:~~

8 ~~———— (a) is written in plain language;~~

9 ~~———— (b) is dated and signed by the individual who is the subject of the test or by a person authorized to act~~
 10 ~~on behalf of the individual;~~

11 ~~———— (c) specifies the person or types of person authorized to disclose information about the individual;~~

12 ~~———— (d) specifies the nature of the information authorized to be disclosed;~~

13 ~~———— (e) names the person or entity and identifies by generic reference the representative of the person or~~
 14 ~~entity, if any, to whom the individual is authorizing information to be disclosed; and~~

15 ~~———— (f) specifies the purpose for which the information may be collected.~~

16

17 NEW SECTION. Section 7. Codification instruction. [Sections 4 3 through 8 7 6] are intended to be
 18 codified as an integral part of Title 33, chapter 18, and the provisions of Title 33, chapter 18, apply to [sections
 19 4 3 through 8 7 6].

20

21 NEW SECTION. Section 8. Saving clause. [This act] does not affect rights and duties that matured,
 22 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

23

24 NEW SECTION. Section 9. Severability. If a part of [this act] is invalid, all valid parts that are severable
 25 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part
 26 remains in effect in all valid applications that are severable from the invalid applications.

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- END -

