

AN ACT

RELATING TO HEALTH CARE; EXCEPTING A CLINICAL LABORATORY PERFORMING SERVICES PURSUANT TO A WRITTEN ORDER FROM A HEALTH CARE PRACTITIONER FROM THE REQUIREMENT TO OBTAIN INFORMED CONSENT FOR GENETIC ANALYSIS OR TESTING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 24-21-1 NMSA 1978 (being Laws 1998, Chapter 77, Section 1) is amended to read:

"24-21-1. SHORT TITLE.--Chapter 24, Article 21 NMSA 1978 may be cited as the "Genetic Information Privacy Act"."

SECTION 2. Section 24-21-2 NMSA 1978 (being Laws 1998, Chapter 77, Section 2, as amended) is amended to read:

"24-21-2. DEFINITIONS.--As used in the Genetic Information Privacy Act:

A. "DNA" means deoxyribonucleic acid, including mitochondrial DNA, complementary DNA and DNA derived from ribonucleic acid;

B. "gene products" means gene fragments, ribonucleic acids or proteins derived from DNA that would be a reflection of or indicate DNA sequence information;

C. "genetic analysis" means a test of an individual's DNA, gene products or chromosomes that indicates a propensity for or susceptibility to illness, disease, impairment or other disorders, whether physical or mental;

that demonstrates genetic or chromosomal damage due to environmental factors; or that indicates carrier status for disease or disorder; excluded, however, are routine physical measurements, chemical, blood and urine analysis, tests for drugs, tests for the presence of HIV virus and any other tests or analyses commonly accepted in clinical practice at the time ordered;

D. "genetic information" means information about the genetic makeup of an individual or members of an individual's family, including information resulting from genetic testing, genetic analysis, DNA composition, participation in genetic research or use of genetic services;

E. "genetic propensity" means the presence in an individual or members of an individual's family of real or perceived variations in DNA or other genetic material from that of the normal genome that do not represent the outward physical or medical signs of a genetic disease at the time of consideration;

F. "genetic testing" means a test of an individual's DNA, ribonucleic acid, chromosomes or proteins, including carrier status, that are linked with physical or mental disorders, impairments or genetic characteristics or that indicate that an individual may be predisposed to an illness, disease, impairment or other disorder;

G. "insurer" means an insurance company, insurance

service or insurance organization that is licensed to engage in the business of insurance in the state and that is subject to state law that regulates insurance within the meaning of Paragraph (2) of Subsection (b) of Section 514 of the federal Employee Retirement Income Security Act of 1974, as amended. "Insurer" does not include an insurance company that is licensed under the Prepaid Dental Plan Law or a company that is solely engaged in the sale of dental insurance and is not licensed under the Prepaid Dental Plan Law, but under another provision of the New Mexico Insurance Code; and

H. "laboratory" means a facility accredited pursuant to the federal clinical laboratory improvement amendments for the biological, microbiological, serological, chemical, immunohematological, hematological, biophysical, cytological, pathological or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention or treatment of any disease or impairment of, or the assessment of the health of, human beings and includes procedures to determine, measure or otherwise describe the presence or absence of various substances or organisms in the body."

SECTION 3. Section 24-21-3 NMSA 1978 (being Laws 1998, Chapter 77, Section 3) is amended to read:

"24-21-3. GENETIC ANALYSIS PROHIBITED WITHOUT INFORMED CONSENT--EXCEPTIONS.--

A. Except as provided in Subsection C of this section, no person shall obtain genetic information or samples for genetic analysis from an individual without first obtaining informed and written consent from the individual or the individual's authorized representative.

B. Except as provided in Subsection C of this section, genetic analysis of an individual or collection, retention, transmission or use of genetic information without the informed and written consent of the individual or the individual's authorized representative is prohibited.

C. An individual's DNA, genetic information or the results of genetic analysis may be obtained, retained, transmitted or used without the individual's written and informed consent pursuant to federal or state law or regulations only:

(1) to identify an individual in the course of a criminal investigation by a law enforcement agency;

(2) if the individual has been convicted of a felony, for purposes of maintaining a DNA database for law enforcement purposes;

(3) to identify a deceased individual;

(4) to establish parental identity;

(5) to screen newborns;

(6) if the DNA, genetic information or results of genetic analysis are not identified with the

individual or the individual's family members;

(7) by a court for determination of damage awards pursuant to the Genetic Information Privacy Act;

(8) by medical repositories or registries;

(9) for the purpose of medical or scientific research and education, including retention of gene products, genetic information or genetic analysis if the identity of the individual or the individual's family members is not disclosed;

(10) for the purpose of emergency medical treatment consistent with applicable law; or

(11) by a laboratory conducting an analysis or test of a specified individual pursuant to a written order to the laboratory from a health care practitioner or the health care practitioner's agent, including by electronic transmission.

D. Actions of an insurer and third parties dealing with an insurer in the ordinary course of conducting and administering the business of life, disability income or long-term care insurance are exempt from the provisions of this section if the use of genetic analysis or genetic information for underwriting purposes is based on sound actuarial principles or related to actual or reasonably anticipated experience. However, before or at the time of collecting genetic information for use in conducting and administering

the business of life, disability income or long-term care insurance, the insurer shall notify in writing an applicant for insurance or the insured that the information may be used, transmitted or retained solely for the purpose of conducting and administering the business of life, disability income or long-term care insurance.

E. Nothing in Paragraph (5), (8), (9), (10) or (11) of Subsection C of this section authorizes a person to obtain, retain, transmit or use an individual's DNA, genetic information or the results of genetic analysis if the individual or the individual's authorized representative or guardian, or the parent or guardian of a minor child, gives notice to the person of an objection on the basis of religious tenets or practices."

SECTION 4. Section 24-21-4 NMSA 1978 (being Laws 1998, Chapter 77, Section 4, as amended) is amended to read:

"24-21-4. GENETIC DISCRIMINATION PROHIBITED.--

A. Discrimination by an insurer against an individual or member of the individual's family on the basis of genetic analysis, genetic information or genetic propensity is prohibited.

B. The provisions of this section do not require a health insurer to provide particular benefits other than those provided under the terms of the plan or coverage. A health insurer shall not consider a genetic propensity,

susceptibility or carrier status as a pre-existing condition for the purpose of limiting or excluding benefits, establishing rates or providing coverage.

C. The provisions of this section do not prohibit use of genetic analysis, genetic propensity or genetic information by an insurer in the ordinary conduct of business in connection with life, disability income or long-term care insurance if use of genetic analysis, genetic propensity or genetic information in underwriting is based on sound actuarial principles or related to actual or reasonably anticipated experience.

D. It is unlawful for a person to use genetic information in employment, recruiting, housing or lending decisions or in extending public accommodations and services."

SECTION 5. Section 24-21-5 NMSA 1978 (being Laws 1998, Chapter 77, Section 5) is amended to read:

"24-21-5. RIGHTS OF RETENTION.--

A. Unless otherwise authorized by Subsection C of Section 24-21-3 NMSA 1978, no person shall retain an individual's genetic information, gene products or samples for genetic analysis without first obtaining informed and written consent from the individual or the individual's authorized representative. This subsection does not affect the status of original medical records of patients, and the rules of confidentiality and accessibility applicable to the records

continue in force.

B. An individual's genetic information or samples for genetic analysis shall be destroyed promptly upon the specific request by that individual or that individual's authorized representative unless:

(1) retention is necessary for the purposes of a criminal or death investigation or a criminal or juvenile proceeding;

(2) retention is authorized by order of a court of competent jurisdiction;

(3) retention is authorized under a research protocol approved by an institution review board pursuant to federal law or a medical registry or repository authorized by state or federal law; or

(4) the genetic information or samples for genetic analysis have been obtained pursuant to Subsection C of Section 24-21-3 NMSA 1978.

C. Actions of an insurer and third parties dealing with an insurer in the ordinary course of conducting and administering the business of life, disability income or long-term care insurance are exempt from the provisions of this section. However, before or at the time of collecting genetic information for use in conducting and administering the business of life, disability income or long-term care insurance, the insurer shall notify in writing an applicant

for insurance or the insured that the information may be used, transmitted or retained solely for the purpose of conducting and administering the business of life, disability income or long-term care insurance.

D. Nothing in Paragraph (3) or (4) of Subsection B of this section authorizes retention of an individual's genetic information or samples for genetic analysis if the individual or the individual's authorized representative or guardian, or the parent or guardian of a minor child, objects on the basis of religious tenets or practices."

SECTION 6. Section 24-21-6 NMSA 1978 (being Laws 1998, Chapter 77, Section 6) is amended to read:

"24-21-6. PENALTIES.--

A. The attorney general or a district attorney may bring a civil action against a person for violating the provisions of the Genetic Information Privacy Act or to otherwise enforce those provisions.

B. An individual whose rights under the provisions of the Genetic Information Privacy Act have been violated may bring a civil action for damages or other relief.

C. The court may order a person who violates the provisions of the Genetic Information Privacy Act to comply with those provisions and may order other appropriate relief, including:

(1) directing an insurer who has violated

Section 24-21-3 or 24-21-4 NMSA 1978 to provide a policy for hospital and medical expenses, including health insurance, group disability insurance or long-term care coverage, to the injured individual under the same terms and conditions as would have applied had the violation not occurred;

(2) actual damages;

(3) damages of up to five thousand dollars (\$5,000) in addition to any economic loss if the violation results from willful or grossly negligent conduct; and

(4) reasonable attorney fees and appropriate court costs.

D. Pursuant to Subsection C of Section 24-21-3 NMSA 1978, the court may use genetic information to determine the cause of damage or injury and penalty awards.

E. Each instance of wrongful collection, analysis, retention, disclosure or use of genetic information constitutes a separate and actionable violation of the Genetic Information Privacy Act."_____