



2021 South Dakota Legislature
Senate Bill 178
ENROLLED

AN ACT

ENTITLED An Act to prohibit certain insurers from using genetic information.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 58-1-24 be AMENDED.

58-1-24. Definitions related to genetic testing.

Terms used in §§ 58-1-25, 58-1-25.1, and 58-18-87 mean:

- (1) "Genetic information," hereditary information obtained from an individual's genetic test or a genetic test of a family member. The term includes hereditary information obtained from genetic services and participation in genetic research, including any request for or receipt of genetic services or participation by an individual or family member in clinical research that includes genetic services. The term does not include information about an individual's sex or age;
- (2) "Genetic test," an analysis of human DNA, RNA, chromosomes, proteins, or metabolites that detects genotypes, mutations, or chromosomal changes. Genetic test does not mean a routine physical measurement; a chemical, blood, or urine analysis; a test for drugs or HIV infection; or any test performed due to the presence of signs, symptoms, or other manifestations of a disease, illness, impairment, or other disorder;
- (3) "Health carrier," any person who provides health insurance in this state. The term includes a licensed insurance company, a prepaid hospital or medical service plan, a health maintenance organization, a multiple employer welfare arrangement, a fraternal benefit contract, or any person providing a plan of health insurance subject to state insurance regulation;
- (4) "Health insurance," insurance provided pursuant to chapters 58-17 (except disability income insurance), 58-17F, 58-17G, 58-17H, 58-17I, 58-18 (except disability income insurance), 58-18B, 58-38, 58-40, and 58-41;

- (5) "Individual," an applicant for coverage or a person already covered by a health carrier. (SL 2012, ch 239, § 1 provides: "The provisions of chapter 219 of the 2011 Session Laws shall be deemed repealed if the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010), as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (2010) is found to be unconstitutional in its entirety by a final decision of a federal court of competent jurisdiction and all appeals exhausted or time for appeals elapsed");
- (6) "Life insurer," an entity subject to regulation under chapter 58-15 or otherwise issuing contracts of life insurance and annuities under chapter 58-15;
- (7) "Long-term care insurer," an insurer that issues long-term care insurance policies pursuant to chapter 58-17B.

Section 2. That § 58-1-25 be AMENDED.

58-1-25. Use of genetic tests in offer, sale, or renewal of insurance prohibited.

No health carrier, life insurer, or long-term care insurer, in determining eligibility for coverage, establishing premiums, limiting coverage, renewing coverage, or any other underwriting decision, may, in connection with the offer, sale, or renewal of insurance:

- (1) Require or request an individual or a blood relative of the individual to take a genetic test; or
- (2) Take into consideration the fact that a genetic test was refused by an individual or a blood relative of the individual.

Section 3. That a NEW SECTION be added:

58-1-25.1. Sharing of genetic information prohibited--Health carrier, life insurer, long-term care insurer.

Any company providing genetic testing directly to a consumer is prohibited from sharing any genetic test, genetic information, or other personally identifiable information of a consumer with any health carrier, life insurer, or long-term care insurer without written consent from the consumer. Nothing in this section prohibits a company that provides genetic testing from communicating with a health carrier for the purposes of payment, coordination of medical treatment, or patient care so long as such communication is compliant with the Health Insurance Portability and Accountability Act and only used for the purposes permitted in this section.

Section 4. This Act is effective on January 1, 2022, and applies to policies entered into or renewed on or after January 1, 2022.

An Act to prohibit certain insurers from using genetic information.

I certify that the attached Act originated in the:

Received at this Executive Office this ____ day of _____,

Senate as Bill No. 178

2021 at _____ M.

Secretary of the Senate

By _____
for the Governor

President of the Senate

The attached Act is hereby approved this _____ day of _____, A.D., 2021

Attest:

Secretary of the Senate

Governor

STATE OF SOUTH DAKOTA,

ss.

Office of the Secretary of State

Speaker of the House

Attest:

Filed _____, 2021
at _____ o'clock __ M.

Chief Clerk

Secretary of State

Senate Bill No. 178
File No. _____
Chapter No. _____

By _____
Asst. Secretary of State