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CHAPTER 93.

PRIVACY OF GENETIC INFORMATION

**SECTION 38‑93‑10.** Definitions.

As used in this chapter:

(1) “Genetic characteristic” means any scientifically or medically identifiable gene or chromosome, or alteration thereof, which is known to be a cause of disease or disorder, or determined to be associated with a statistically increased risk of development of a disease or disorder and which is asymptomatic of any disease or disorder.

(2) “Genetic information” means information about genes, gene products, or genetic characteristics derived from an individual or a family member of the individual. “Gene product” is a scientific term that means messenger RNA and translated protein. For purposes of this chapter, genetic information shall not include routine physical measurements; chemical, blood, and urine analysis, unless conducted purposely to diagnose a genetic characteristic; tests for abuse of drugs; and tests for the presence of the human immunodeficiency virus.

(3) “Genetic test” means a laboratory test or other scientifically or medically accepted procedure for determining the presence or absence of genetic characteristics in an individual.

**SECTION 38‑93‑20.** Medical coverage and health insurance; restrictions or discrimination on basis of genetic information prohibited.

(A) No person when issuing, renewing, or reissuing a policy, contract, or plan of accident and health insurance providing hospital, medical and surgical, or major medical coverage on an expense incurred basis, providing a corporate health services plan, or providing a health care plan for health care services by a health maintenance organization, on the basis of any genetic information obtained concerning an individual or on the individual’s request for genetic services, with respect to such policy, contract, or plan shall:

(1) terminate, restrict, limit, or otherwise apply conditions to coverage of an individual or restrict the sale to an individual;

(2) cancel or refuse to renew the coverage of an individual;

(3) exclude an individual from coverage;

(4) impose a waiting period prior to commencement of coverage of an individual;

(5) require inclusion of a rider that excludes coverage for certain benefits and services; or

(6) establish differential in premium rates for coverage.

(B) In addition, no discrimination must be made in the fees or commissions of an agent or agency for an enrollment, a subscription, or the renewal of an enrollment or subscription of a person on the basis of a person’s genetic characteristics which under some circumstances may be associated with disability in that person or that person’s offspring.

(C) Accident and health insurance as used in this chapter does not include accident‑only, blanket accident and sickness, specified disease, credit, dental, vision, Medicare supplement, long‑term care, or disability‑income insurance; coverage issued as a supplement to liability or other insurance; coverage designed solely to provide payments on a per diem, fixed indemnity or nonexpense incurred basis, coverage for Medicare or Medicaid services pursuant to a contract with state or federal government, workers’ compensation or similar insurance; or automobile medical payment insurance.

**SECTION 38‑93‑30.** Confidentiality; disclosure restrictions and exceptions.

All genetic information obtained before or after the effective date of this chapter must be confidential and must not be disclosed to a third party in a manner that allows identification of the individual tested without first obtaining the written informed consent of that individual or a person legally authorized to consent on behalf of the individual, except that genetic information may be disclosed without consent:

(1) as necessary for the purpose of a criminal or death investigation, a criminal or judicial proceeding, an inquest, or a child fatality review, or for purposes of the State DNA Database established by Section 23‑3‑610;

(2) to determine the paternity of a person pursuant to Section 63‑17‑30;

(3) pursuant to an order of a court of competent jurisdiction specifically ordering disclosure of the genetic information;

(4) where genetic information concerning a deceased individual will assist in medical diagnosis of blood relatives of the decedent;

(5) to a law enforcement or other authorized agency for the purpose of identifying a person or a dead body; or

(6) as specifically authorized or required by a state or federal statute.

A provider of accident and health insurance may not require a person to consent to the disclosure of genetic information to the insurer as a condition for obtaining accident and health insurance.

**SECTION 38‑93‑40.** Genetic tests; informed consent required; exceptions.

It is unlawful to perform a genetic test on tissue, blood, urine, or other biological sample taken from an individual without first obtaining specific informed consent to the test from the individual, or a person legally authorized to consent on behalf of the individual, unless the test is performed:

(1) by or for a law enforcement agency in a criminal investigation or for the State DNA Database as provided in Sections 23‑3‑620 through 23‑3‑640;

(2) for purposes of identifying a person or a dead body;

(3) to establish paternity as provided by Section 63‑17‑30;

(4) for use in a study in which the identities of the persons from whom the genetic information is obtained are not disclosed to the person conducting the study; or

(5) pursuant to a statute or court order specifically requiring that the test be performed.

**SECTION 38‑93‑50.** Application of chapter to agents and insurance support organizations.

Agents and insurance support organizations are subject to the provisions of this chapter to the extent of their participation in the issue, reissue, or renewal of a policy, contract, or plan of accident and health insurance.

**SECTION 38‑93‑60.** Violations; remedies.

(A) Any violation of this chapter is an unfair trade practice as defined in Section 39‑5‑20 and is subject to the provisions of Sections 39‑5‑110 to 39‑5‑160.

(B) Any individual who is injured by a person’s violation of this chapter may recover in a court of competent jurisdiction the following remedies:

(1) equitable relief, which may include a retroactive order, directing the person to provide health insurance appropriate to the injured individual under the same terms and conditions as would have applied had the violation not occurred; and

(2) an amount equal to any actual damages suffered by the individual as a result of the violation.

(C) The prevailing party in an action under this section may recover costs and reasonable attorney’s fees.