

COMMERCE

FILED MAR 12 '9

421

SENATE FILE  
BY TINSMAN

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act prohibiting the disclosure and use of certain genetic  
2 information with respect to health insurance coverage and  
3 employment.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SF 421  
COMMERCE

1 Section 1. Section 216.6, subsection 1, paragraph a, Code  
2 2001, is amended to read as follows:

3 a. Person to refuse to hire, accept, register, classify,  
4 or refer for employment, to discharge any employee, or to  
5 otherwise discriminate in employment against any applicant for  
6 employment or any employee because of the age, race, creed,  
7 color, sex, national origin, religion, genetic test results,  
8 or disability of such applicant or employee, unless based upon  
9 the nature of the occupation. If a person with a disability  
10 is qualified to perform a particular occupation, by reason of  
11 training or experience, the nature of that occupation shall  
12 not be the basis for exception to the unfair or discriminating  
13 practices prohibited by this subsection.

14 Sec. 2. NEW SECTION. 514M.1 DEFINITIONS.

15 As used in this chapter, unless the context otherwise  
16 requires:

17 1. "DNA" means deoxyribonucleic acid, a nucleic acid that  
18 carries the genetic information in the cell and is capable of  
19 self-replication and synthesis of RNA. DNA consists of two  
20 long chains of nucleotides twisted into a double helix and  
21 joined by hydrogen bonds between the complementary bases  
22 adenine and thymine or cytosine and guanine. The sequence of  
23 nucleotides determines individual hereditary characteristics.

24 2. "Disability" means, with respect to an individual, any  
25 one of the following:

26 a. A physical or mental impairment that substantially  
27 limits one or more of the major life activities of such  
28 individual.

29 b. A record of such an impairment.

30 c. Being regarded as having such an impairment.

31 3. "Employer" means a person who has one or more  
32 employees, or a person who as contractor or subcontractor is  
33 furnishing material or performing work for the state or a  
34 governmental entity or agency of the state, and includes an  
35 agent of such a person.

1 4. "Genetic information" means information about a gene,  
2 gene product, or inherited characteristic derived from an  
3 individual's family history or a genetic test.

4 5. "Genetic test" means the analysis of human DNA, RNA,  
5 chromosomes, and those proteins and metabolites used to detect  
6 heritable or somatic disease-related genotypes or karyotypes  
7 for clinical purposes. A genetic test must be generally  
8 accepted in the scientific and medical communities as being  
9 specifically determinative for the presence, absence, or  
10 mutation of a gene or chromosome in order to qualify under  
11 this definition.

12 "Genetic test" does not include a routine physical  
13 examination or a routine analysis, including, but not limited  
14 to, a chemical analysis of body fluids, unless conducted  
15 specifically to determine the presence, absence, or mutation  
16 of a gene or chromosome.

17 6. "Insured" means an individual who is provided health  
18 insurance under a third-party payment provider contract, plan,  
19 or policy, that may include dependents and other covered  
20 persons.

21 7. "Insurer" means a person who delivers, issues for  
22 delivery, continues, or renews a third-party payment provider  
23 contract, plan, or policy as follows:

24 a. Individual or group accident and sickness insurance  
25 providing coverage on an expense-incurred basis.

26 b. An individual or group hospital or medical service  
27 contract issued pursuant to chapter 509, 514, or 514A.

28 c. An individual or group health maintenance organization  
29 contract regulated under chapter 514B.

30 d. A plan established pursuant to chapter 509A for public  
31 employees.

32 e. Preferred provider contracts limiting choice of  
33 specific providers.

34 f. An organized delivery system authorized under 1993 Iowa  
35 Acts, chapter 158, and licensed by the director of public

1 health.

2 g. Any other entity engaged in the business of insurance,  
3 risk transfer, or risk retention, that is subject to the  
4 jurisdiction of the commissioner of insurance.

5 8. "RNA" means ribonucleic acid, a polymeric constituent  
6 of all living cells and many viruses, consisting of a long,  
7 usually single-stranded chain of alternating phosphate and  
8 ribose units with the bases adenine, guanine, cytosine, and  
9 uracil bonded to the ribose. The structure and base sequence  
10 of RNA are determinants of protein synthesis and the  
11 transmission of genetic information.

12 Sec. 3. NEW SECTION. 514M.2 PROHIBITIONS FOR INSURERS  
13 REGARDING GENETIC INFORMATION -- CONSENT REQUIRED FOR  
14 DISCLOSURE.

15 1. An insurer shall not require an insured or a spouse or  
16 dependent of an insured, or an applicant for coverage or a  
17 spouse or dependent of an applicant, to do either of the  
18 following:

19 a. Undergo genetic testing before issuing, renewing, or  
20 continuing a third-party payment provider contract, plan, or  
21 policy.

22 b. Disclose to someone other than the insured or  
23 applicant, or the dependent of the insured or applicant,  
24 whether genetic testing has been conducted, the results of  
25 genetic testing, or genetic information.

26 2. An insurer shall not deny the issuance or renewal of a  
27 contract, policy, or plan, or deny coverage under an existing  
28 contract, policy, or plan based upon the results of a genetic  
29 test.

30 3. An insurer shall not disclose genetic information  
31 without the written consent of the individual to whom the test  
32 relates, or the individual's parent or legal guardian, if the  
33 individual is a minor.

34 4. Subsection 1 does not prohibit an insurer from  
35 requiring an applicant to answer questions concerning family

1 history.

2 Sec. 4. NEW SECTION. 514M.3 EMPLOYMENT DISCRIMINATION ON  
3 THE BASIS OF GENETIC INFORMATION PROHIBITED.

4 1. Except as otherwise required by federal law, an  
5 employer shall not do any of the following:

6 a. Fail or refuse to hire, recruit, or promote an  
7 individual because of a disability or genetic information that  
8 is unrelated to the individual's ability to perform the duties  
9 of a particular job or position.

10 b. Discharge or otherwise discriminate against an  
11 individual with respect to compensation or the terms,  
12 conditions, or privileges of employment, because of a  
13 disability or genetic information that is unrelated to the  
14 individual's ability to perform the duties of a particular job  
15 or position.

16 c. Limit, segregate, or classify an employee or applicant  
17 for employment in a way that deprives or tends to deprive an  
18 individual of employment opportunities or otherwise adversely  
19 affects the status of an employee because of a disability or  
20 genetic information that is unrelated to the individual's  
21 ability to perform the duties of a particular job or position.

22 d. Fail or refuse to hire, recruit, or promote an  
23 individual on the basis of physical or mental examinations  
24 that are not directly related to the requirements of a  
25 particular job or position.

26 e. Discharge or take other discriminatory action against  
27 an individual on the basis of physical or mental examinations  
28 that are not directly related to the requirements of a  
29 particular job or position.

30 f. Fail or refuse to hire, recruit, or promote an  
31 individual when adaptive devices or aids may be utilized  
32 thereby enabling that individual to perform the specific  
33 requirements of a particular job or position.

34 g. Discharge or take other discriminatory action against  
35 an individual when adaptive devices or aids may be utilized

1 thereby enabling that individual to perform the specific  
2 requirements of a particular job or position.

3 h. Require an individual to submit to a genetic test or to  
4 provide genetic information as a condition of obtaining or  
5 maintaining employment, or of promotion.

6 2. Subsection 1 does not prohibit the following:

7 a. An individual may voluntarily provide to an employer  
8 genetic information that is related to the employee's health  
9 or safety in the workplace.

10 b. An employer may use genetic information received from  
11 an employee under this subsection to protect the employee's  
12 health or safety.

13 3. This section shall not apply to the employment of an  
14 individual by the individual's parent, spouse, or child.

15 4. Except as provided in subsection 2, an employer shall  
16 not directly or indirectly acquire or have access to any  
17 genetic information concerning an employee or applicant for  
18 employment, or the genetic information of a member of the  
19 employee's or applicant's family.

20 Sec. 5. NEW SECTION. 514M.4 PENALTY.

21 1. Any insurer who violates any provision of section  
22 514M.2 shall, after notice and hearing and upon order of the  
23 commissioner of insurance, be subject to a monetary penalty of  
24 one thousand dollars.

25 2. Any employer who violates any provision of section  
26 514M.3 shall, after notice and hearing and upon order by the  
27 civil rights commission, be subject to a monetary penalty of  
28 one thousand dollars.

29 EXPLANATION

30 This bill creates new Code chapter 514M, which prohibits  
31 the disclosure and use of certain genetic information with  
32 respect to certain health insurance coverage and employment  
33 matters.

34 The bill creates new Code section 514M.1, which provides  
35 definitions for the new chapter, including "DNA",

1 "disability", "employer", "genetic information", "genetic  
2 test", "insured", "insurer", and "RNA".

3 The bill creates new Code section 514M.2, which prohibits  
4 the following activities by an insurer: (1) requiring genetic  
5 testing or disclosing the results of genetic testing as a  
6 condition of issuing, renewing, or continuing a third-party  
7 payment contract, plan, or policy; (2) denial of coverage  
8 based on the results of a genetic test; (3) disclosing genetic  
9 information without the written consent of the individual or  
10 the individual's parent or legal guardian, if a minor. An  
11 insurer is not prohibited from asking an applicant about the  
12 applicant's family history.

13 The bill creates new Code section 514M.3, which prohibits  
14 employment discrimination on the basis of genetic information.  
15 An employer is prohibited from the following: (1) failing or  
16 refusing to hire, recruit, or promote because of a disability  
17 or genetic information unrelated to the ability to perform the  
18 job; (2) discharging or otherwise discriminating because of a  
19 disability or genetic information unrelated to the ability to  
20 perform the job; (3) limiting, segregating, or classifying an  
21 employee or applicant in a way that deprives the individual of  
22 employment opportunities or otherwise adversely affects the  
23 status of an employee because of a disability or genetic  
24 information that is unrelated to the individual's ability to  
25 perform the duties of the job; (4) failing or refusing to  
26 hire, recruit, or promote on the basis of physical or mental  
27 examinations not directly related to the requirements of the  
28 job; (5) failing or refusing to hire, recruit, or promote when  
29 adaptive aids or devices would enable the individual to  
30 perform the job; (6) discharging or taking other  
31 discriminatory action when adaptive aids or devices would  
32 enable the individual to perform the job; and (7) requiring an  
33 individual to submit to a genetic test or to provide genetic  
34 information as a condition of obtaining or maintaining  
35 employment, or of promotion.

1 The prohibitions do not apply to voluntary submissions of  
2 genetic information for health and safety reasons, and  
3 employer use of such information. The prohibitions do not  
4 apply to employment relationships involving a parent, spouse,  
5 or child.

6 An employer shall not directly or indirectly acquire or  
7 have access to any genetic information of an employee,  
8 applicant, or any family member of an employee or an  
9 applicant.

10 In conjunction with new Code section 514M.3, the bill also  
11 amends Code section 216.6 to provide that it is an unfair or  
12 discriminatory practice for a person to refuse to hire,  
13 accept, register, classify, or refer for employment, to  
14 discharge any employee, or to otherwise discriminate in  
15 employment against any applicant for employment or any  
16 employee because of genetic test results.

17 The bill provides for a \$1,000 penalty, to be assessed  
18 after notice and opportunity for hearing, by the commissioner  
19 of insurance for violations of Code section 514M.2, and by the  
20 civil rights commission for violations of Code section 514M.3.

21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35