

2021 South Dakota Legislature

Senate Bill 178**AMENDMENT 178B FOR THE SENATE HEALTH AND HUMAN SERVICES BILL**

1 **An Act to prohibit certain insurers from using genetic information.**

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

3 **Section 1.** That § 58-1-24 be AMENDED.

4 **58-1-24. Definitions related to genetic testing.**

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

- 6 (1) "Genetic information," ~~hereditary information about obtained from genes, gene~~
7 ~~products, and inherited characteristics that may derive from the individual or a~~
8 ~~family member. The term includes information regarding carrier status and~~
9 ~~information derived from laboratory tests that identify mutations in specific genes~~
10 ~~or chromosomes, physical medical examinations, family histories, and direct~~
11 ~~analysis of genes or chromosomes~~ an individual's genetic test or a genetic test of a
12 family member. The term includes hereditary information obtained from genetic
13 services and participation in genetic research, including any request for or receipt
14 of genetic services or participation by an individual or family member in clinical
15 research that includes genetic services. The term does not include information
16 about an individual's sex or age;
- 17 (2) "Genetic test," ~~a test of human DNA, RNA, chromosomes, or genes performed in~~
18 ~~order to identify the presence or absence of an inherited variation, alteration, or~~
19 ~~mutation which is associated with predisposition to disease, illness, impairment, or~~
20 ~~other disorder. Genetic test does not mean a routine physical measurement; a~~
21 ~~chemical, blood, or urine analysis; a test for drugs or HIV infection; any test~~
22 ~~commonly accepted in clinical practice; or any test performed due to the presence~~
23 ~~of signs, symptoms, or other manifestations of a disease, illness, impairment, or~~
24 ~~other disorder~~ an analysis of human DNA, RNA, chromosomes, proteins, or
25 metabolites that detects genotypes, mutations, or chromosomal changes. Genetic
26 test does not mean a routine physical measurement; a chemical, blood, or urine

1 analysis; a test for drugs or HIV infection; or any test performed due to the presence
2 of signs, symptoms, or other manifestations of a disease, illness, impairment, or
3 other disorder;

4 (3) "Health carrier," any person who provides health insurance in this state. The term
5 includes a licensed insurance company, a prepaid hospital or medical service plan,
6 a health maintenance organization, a multiple employer welfare arrangement, a
7 fraternal benefit contract, or any person providing a plan of health insurance subject
8 to state insurance regulation;

9 (4) "Health insurance," insurance provided pursuant to chapters 58-17 (except
10 disability income insurance), 58-17F, 58-17G, 58-17H, 58-17I, 58-18 (except
11 disability income insurance), 58-18B, 58-38, 58-40, and 58-41; ~~and~~

12 (5) "Individual," an applicant for coverage or a person already covered by a health
13 carrier. (SL 2012, ch 239, § 1 provides: "The provisions of chapter 219 of the 2011
14 Session Laws shall be deemed repealed if the Patient Protection and Affordable Care
15 Act, Pub. L. No. 111-148, 124 Stat. 119 (2010), as amended by the Health Care
16 and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029
17 (2010) is found to be unconstitutional in its entirety by a final decision of a federal
18 court of competent jurisdiction and all appeals exhausted or time for appeals
19 elapsed:");

20 (6) "Life insurer," an entity subject to regulation under chapter 58-15 or otherwise
21 issuing contracts of life insurance and annuities under chapter 58-15;

22 (7) "Long-term care insurer," an insurer that issues long-term care insurance policies
23 pursuant to chapter 58-17B.

24 **Section 2.** That § 58-1-25 be AMENDED.

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

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

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

1 **Section 3.** That a NEW SECTION be added:

2 **58-1-25.1. Sharing of genetic information prohibited--Health carrier, life**
3 **insurer, long-term care insurer.**

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

12 **Section 4.** That a NEW SECTION be added:

13 **Effective date.**

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