

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999
4

As Engrossed: H1/25/99

A Bill

HOUSE BILL 1046

5 By: Representative Lendall
6
7

For An Act To Be EnTitled

9 "AN ACT TO PROHIBIT THE USE OF CERTAIN GENETIC TESTS
10 TO DETERMINE ELIGIBILITY FOR EMPLOYMENT, OCCUPATIONAL
11 LICENSURE OR COVERAGE BY GROUP HEALTH PLANS, AND TO
12 LIMIT USE OF INFORMATION DERIVED FROM THOSE TESTS; AND
13 FOR OTHER PURPOSES. "
14

SubTitle

15 "AN ACT TO PROHIBIT VARIOUS KINDS OF
16 DISCRIMINATION AND DISCLOSURES ON THE
17 BASIS OF CERTAIN GENETIC TESTS. "
18
19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

22 SECTION 1. Arkansas Code Title 11, Chapter 4 is amended by adding the
23 following new language:

24 "11-4-701. Definitions. In this subchapter:

25 (1) 'DNA' means deoxyri bonucle ic acid.

26 (2) 'Genetic information' means information derived from the results of
27 a genetic test.

28 (3) 'Genetic test' means a laboratory test of an individual's DNA, RNA,
29 proteins, or chromosomes to identify by analysis of the DNA, RNA, proteins, or
30 chromosomes the genetic mutations or alterations in the DNA, RNA, proteins, or
31 chromosomes that are associated with a predisposition for a clinically
32 recognized disease or disorder. The term does not include:

33 (A) A routine physical examination or a routine test performed as
34 a part of a physical examination;

35 (B) A chemical, blood, or urine analysis;

36 (C) A test to determine drug use; or

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1 (D) A test for the presence of HIV.

2 (4) 'HIV' means the human immunodeficiency virus or any other
3 identified causative agent of acquired immunodeficiency syndrome (AIDS).

4 (5) 'RNA' means ribonucleic acid."

5
6 SECTION 2. Arkansas Code Title 11, Chapter 4 is amended by adding the
7 following new language:

8 "11-4-702. (a) An employer commits an unlawful employment practice if
9 the employer fails or refuses to hire, discharges, or otherwise discriminates
10 against an individual with respect to compensation or the terms, conditions,
11 or privileges of employment:

12 (1) On the basis of genetic information concerning the
13 individual; or

14 (2) Because of the refusal of the individual to submit to a
15 genetic test.

16 (b) A labor organization commits an unlawful employment practice if the
17 labor organization excludes or expels from membership or otherwise
18 discriminates against an individual:

19 (1) On the basis of genetic information concerning the
20 individual; or

21 (2) Because of the refusal of the individual to submit to a
22 genetic test.

23 (c) An employment agency commits an unlawful employment practice if the
24 employment agency classifies or refers for employment, fails or refuses to
25 refer for employment, or otherwise discriminates against an individual:

26 (1) On the basis of genetic information concerning the
27 individual; or

28 (2) Because of the refusal of the individual to submit to a
29 genetic test.

30 (d) An employer, labor organization, or employment agency commits an
31 unlawful employment practice if the employer, labor organization, or
32 employment agency limits, segregates, or classifies an employee, member, or
33 applicant for employment or membership in a way that would deprive or tend to
34 deprive the employee, member, or applicant of employment opportunities or
35 otherwise adversely affect the status of the employee, member, or applicant:

36 (1) On the basis of genetic information concerning the employee,

1 member, or applicant; or

2 (2) Because of the refusal of the employee, member, or applicant
3 to submit to a genetic test."

4
5 SECTION 3. Arkansas Code Title 11, Chapter 4 is amended by adding the
6 following new language:

7 "11-4-703. (a) Except as provided by subsections (c) and (d), genetic
8 information is confidential and privileged regardless of the source of the
9 information. A person who holds that information may not disclose or be
10 compelled to disclose, by subpoena or otherwise, genetic information about an
11 individual unless the disclosure is specifically authorized by the individual
12 as provided by subsection (b). This subsection applies to a redisclosure of
13 genetic information by a secondary recipient of the information after
14 disclosure of the information by an initial recipient.

15 (b) An individual or the legal representative of an individual may
16 authorize the disclosure of genetic information relating to that individual
17 through a written authorization that includes:

- 18 (1) A description of the information to be disclosed;
- 19 (2) The name of the person to whom the disclosure is made; and
- 20 (3) The purpose for the disclosure.

21 (c) Subject to Arkansas Code 20-15-905 and 20-15-906, genetic
22 information relating to an individual may be disclosed without the
23 authorization required under subsection (b) if the disclosure is:

- 24 (1) Authorized under a state or federal criminal law relating to:
 - 25 (A) The identification of individuals; or
 - 26 (B) A criminal or juvenile proceeding, an inquest, or a
27 child fatality review by a multidisciplinary child-abuse team;
- 28 (2) Required under a specific order of a state or federal court;
- 29 (3) Authorized under a state or federal law to establish
30 paternity;
- 31 (4) Made to furnish genetic information relating to a decedent to
32 the blood relatives of the decedent for the purpose of medical diagnosis; or
- 33 (5) Made to identify a decedent.

34 (d) In addition to the exceptions under subsection (c), genetic
35 information relating to an individual may be disclosed, without the
36 authorization required under subsection (b) if:

1 (1) The disclosure is for information from a research study in
2 which the procedure for obtaining informed written consent and use of the
3 information is governed by national standards for protecting participants
4 involved in research projects, including guidelines issued under 21 C.F.R.
5 Part 50, and 45 C.F.R. Part 46;

6 (2) The information does not readily identify a particular
7 individual; and

8 (3) The information is disclosed pursuant to the terms of the
9 informed written consent of the patient.

10
11 SECTION 4. Arkansas Code Title 11, Chapter 4 is amended by adding the
12 following new language:

13 "11-4-704. An individual who submits to a genetic test has the right to
14 know the results of that test. On the written request of the individual, the
15 entity that performed the test shall disclose the test results to the
16 individual or to a physician designated by the individual."

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18 SECTION 5. Arkansas Code Title 11, Chapter 4 is amended by adding the
19 following new language:

20 "11-4-705. A sample of genetic material taken for a genetic test from
21 an individual shall be destroyed promptly after the purpose for which the
22 sample was obtained is accomplished, unless:

23 (1) The sample is retained under a court order;

24 (2) The individual tested authorizes retention of the sample for
25 purposes of medical treatment or scientific research;

26 (3) For a sample obtained for research that is cleared by an
27 institutional review board, the sample is retained under the requirements that
28 the institutional review board imposes on a specific research project or as
29 authorized by the research participant with institutional review board
30 approval under federal law; or

31 (4) The sample was obtained for a screening test established by the
32 Department of Health and performed by that department or by a laboratory
33 approved by that department."

34
35 SECTION 6. Arkansas Code Title 17, Chapter 1, Subchapter 1 is amended
36 by adding the following new language:

1 "17-1-105. Definitions. In this section:

2 (1) 'DNA' means deoxyribonucleic acid.

3 (2) 'Genetic information' means information derived from the results of
4 a genetic test.

5 (3) 'Genetic test' means a laboratory test of an individual's DNA, RNA,
6 proteins, or chromosomes to identify by analysis of the DNA, RNA, proteins, or
7 chromosomes the genetic mutations or alterations in the DNA, RNA, proteins, or
8 chromosomes that are associated with a predisposition for a clinically
9 recognized disease or disorder. The term does not include:

10 (A) A routine physical examination or a routine test performed as
11 a part of a physical examination;

12 (B) A chemical, blood, or urine analysis;

13 (C) A test to determine drug use; or

14 (D) A test for the presence of HIV.

15 (4) 'HIV' means the human immunodeficiency virus or any other
16 identified causative agent of acquired immunodeficiency syndrome (AIDS).

17 (5) 'Licensing authority' means a state agency or political subdivision
18 that issues an occupational license.

19 (6) 'Occupational license' means a license, certificate, registration,
20 permit, or other form of authorization required by law or rule that must be
21 obtained by an individual to engage in a particular business or occupation.

22 (7) 'Political subdivision' means a municipality, county, or special
23 district or authority. The term includes a school district.

24 (8) 'RNA' means ribonucleic acid.

25 (9) 'State agency' means a department, board, bureau, commission,
26 committee, division, office, council, or agency in the executive or judicial
27 branch of state government."

28
29 SECTION 7. Arkansas Code Title 17, Chapter 1, subchapter 1 is amended
30 by adding the following new language:

31 "17-1-106. A licensing entity may not deny an application for an
32 occupational license, suspend, revoke, or refuse to renew an occupational
33 license, or take any other disciplinary action against a license holder based
34 on the refusal of the license applicant or license holder to:

35 (1) Submit to a genetic test; or

36 (2) Reveal:

- 1 (A) Whether the applicant or holder has had a genetic test; or
- 2 (B) The results of any genetic test to which the applicant or
- 3 holder has submitted."

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5 SECTION 8. Arkansas Code Title 17, Chapter 1, Subchapter 1 is amended

6 by adding the following new language:

7 "17-1-107. (a) Except as provided by subsections (c) and (d) of this

8 section, genetic information is confidential and privileged regardless of the

9 source of the information. A person or entity that holds that information may

10 not disclose or be compelled to disclose, by subpoena or otherwise, genetic

11 information about an individual unless the disclosure is specifically

12 authorized by the individual as provided by subsection (b) of this section.

13 This subsection applies to a redisclosure of genetic information by a

14 secondary recipient of the information after disclosure of the information by

15 an initial recipient.

16 (b) An individual or the legal representative of an individual may

17 authorize the disclosure of genetic information relating to that individual

18 through a written authorization that includes:

- 19 (1) A description of the information to be disclosed;
- 20 (2) The name of the person or entity to whom the disclosure is
- 21 made; and
- 22 (3) The purpose for the disclosure.

23 (c) Subject to Arkansas Code 20-15-905 and 20-15-906, genetic

24 information relating to an individual may be disclosed without the

25 authorization required under subsection (b) of this section if the disclosure

26 is:

- 27 (1) Authorized under a state or federal criminal law relating to:
- 28 (A) The identification of individuals; or
- 29 (B) A criminal or juvenile proceeding, an inquest, or a
- 30 child fatality review by a multidisciplinary child-abuse team;
- 31 (2) Required under a specific order of a state or federal court;
- 32 (3) Authorized under a state or federal law to establish
- 33 paternity;
- 34 (4) Made to furnish genetic information relating to a decedent to
- 35 the blood relatives of the decedent for the purpose of medical diagnosis; or
- 36 (5) Made to identify a decedent.

1 (d) In addition to the exceptions under subsection (c), genetic
2 information relating to an individual may be disclosed without the
3 authorization required under subsection (b) if:

4 (1) The disclosure is for information from a research study in
5 which the procedure for obtaining informed written consent and use of the
6 information is governed by national standards for protecting participants
7 involved in research projects, including guidelines issued under 21 C.F.R.
8 Part 50, and 45 C.F.R. Part 46;

9 (2) The information does not readily identify a particular
10 individual; and

11 (3) The information is disclosed pursuant to the terms of the
12 informed written consent of the patient.

13
14 SECTION 9. Arkansas Code Title 17, Chapter 1, Subchapter 1 is amended
15 by adding the following new language:

16 "17-1-108. An individual who submits to a genetic test has the right to
17 know the results of that test. On the written request of the individual, the
18 entity that performed the test shall disclose the test results to the
19 individual or to a physician designated by the individual."

20
21 SECTION 10. Arkansas Code Title 17, Chapter 1, Subchapter 1 is amended
22 by adding the following new language:

23 "17-1-109. A sample of genetic material taken for a genetic test from
24 an individual shall be destroyed promptly after the purpose for which the
25 sample was obtained is accomplished, unless:

26 (1) The sample is retained under a court order;

27 (2) The individual tested authorizes retention of the sample for
28 purposes of medical treatment or scientific research;

29 (3) For a sample obtained for research that is cleared by an
30 institutional review board, the sample is retained under the requirements that
31 the institutional review board imposes on a specific research project or as
32 authorized by the research participant with institutional review board
33 approval under federal law; or

34 (4) The sample was obtained for a screening test established by the
35 Department of Health and performed by that department or by a laboratory
36 approved by that department."

1
2 SECTION 11. Definitions. In sections 11 through 17 of this act:

3 (1) "DNA" means deoxyribonucleic acid.

4 (2) "Genetic information" means information derived from the results of
5 a genetic test.

6 (3) "Genetic test" means a laboratory test of an individual's DNA, RNA,
7 proteins, or chromosomes to identify by analysis of the DNA, RNA, proteins, or
8 chromosomes the genetic mutations or alterations in the DNA, RNA, proteins, or
9 chromosomes that are associated with a predisposition for a clinically
10 recognized disease or disorder. The term does not include:

11 (A) A routine physical examination or a routine test performed as
12 a part of a physical examination;

13 (B) A chemical, blood, or urine analysis;

14 (C) A test to determine drug use; or

15 (D) A test for the presence of HIV.

16 (4) "Group health plan" has the same meaning given that term in the
17 federal Health Insurance Portability and Accountability Act of 1996.

18 (5) "HIV" means the human immunodeficiency virus or any other
19 identified causative agent of acquired immunodeficiency syndrome (AIDS);

20 (6) "RNA" means ribonucleic acid.

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22 SECTION 12. (a) A group health plan issuer may not use genetic
23 information to reject, deny, limit, cancel, refuse to renew, increase the
24 premiums for, or otherwise adversely affect eligibility for or coverage under
25 the group health plan.

26 (b) If a group health plan issuer requests that an applicant for
27 coverage under the plan submit to a genetic test in connection with the
28 application for coverage for a purpose other than a purpose prohibited under
29 subsection (a) of this section, the issuer must:

30 (1) Notify the applicant that the test is required;

31 (2) Disclose to the applicant the proposed use of the test
32 results; and

33 (3) Obtain the applicant's written informed consent for the test
34 before the administration of the test.

35 (c) In the consent form, the applicant shall state whether the
36 applicant elects to be informed of the results of the test. If the applicant

1 does so elect, the person or entity that performs the test shall disclose the
2 results of the test to the applicant, as well as to the group health plan
3 issuer, and the group health plan issuer shall ensure that:

4 (1) The applicant receives an interpretation of the test results
5 made by a qualified health care practitioner; and

6 (2) A physician or other health care practitioner designated by
7 the applicant receives a copy of the results of the test.

8 (d) A group health plan issuer may not use the results of a genetic
9 test conducted in accordance with subsection (b) of this section as an
10 inducement for the purchase of coverage under the plan.

11 (e) A group health plan issuer may not use the refusal of an applicant
12 to submit to a genetic test to reject, deny, limit, cancel, refuse to renew,
13 increase the premiums for, or otherwise adversely affect eligibility for or
14 coverage under the group health plan.

15
16 SECTION 13. (a) Except as provided by subsections (c) and (d) of this
17 section, genetic information is confidential and privileged regardless of the
18 source of the information. A person or entity that holds that information may
19 not disclose or be compelled to disclose, by subpoena or otherwise, genetic
20 information about an individual unless the disclosure is specifically
21 authorized by the individual as provided by subsection (b) of this section.
22 This subsection applies to a redisclosure of genetic information by a
23 secondary recipient of the information after disclosure of the information by
24 an initial recipient.

25 (b) An individual or the legal representative of an individual may
26 authorize the disclosure of genetic information relating to that individual
27 through an authorization that:

28 (1) Is written in plain language;

29 (2) Is dated;

30 (3) Contains a specific description of the information to be
31 disclosed;

32 (4) Identifies or describes each person authorized to disclose
33 the genetic information to a group health plan issuer;

34 (5) Identifies or describes the individuals or entities to whom
35 the disclosure or subsequent redisclosure of the genetic information may be
36 made;

1 (6) Describes the specific purpose of the disclosure;

2 (7) Is signed by the individual or the legal representative and,
3 if the disclosure is for claiming proceeds of any affected life insurance
4 policy, the claimant; and

5 (8) Advises the individual or legal representative that the
6 individual's authorized representative is entitled to receive a copy of the
7 authorization form.

8 (c) Subject to Arkansas Code 20-15-905 and 20-15-906, genetic
9 information relating to an individual may be disclosed without the
10 authorization required under subsection (b) of this section if the disclosure
11 is:

12 (1) Authorized under a state or federal criminal law relating to:

13 (A) The identification of individuals; or

14 (B) A criminal or juvenile proceeding, an inquest, or a
15 child fatality review by a multidisciplinary child-abuse team;

16 (2) Required under a specific order of a state or federal court;

17 (3) Authorized under a state or federal law to establish
18 paternity;

19 (4) Made to furnish genetic information relating to a decedent to
20 the blood relatives of the decedent for the purpose of medical diagnosis; or

21 (5) Made to identify a decedent.

22 (d) Except as provided by this subsection, a group health plan issuer
23 may not redisclose genetic information unless the redisclosure is consistent
24 with the disclosures authorized by the tested individual under an
25 authorization form executed under subsection (b) of this section. A group
26 health plan issuer may redisclose genetic information:

27 (1) For actuarial or research studies if:

28 (A) A tested individual may not be readily identified in
29 any actuarial or research report; and

30 (B) Any materials that readily identify a tested individual
31 are returned or destroyed as soon as reasonably practicable;

32 (2) To the department for the purposes of the enforcement of this
33 article; or

34 (3) For purposes directly related to enabling business decisions
35 to be made about the purchase, transfer, merger, or sale of all or part of an
36 insurance business or about obtaining reinsurance affecting that insurance

1 business.

2 (e) A redisclosure authorized under section (d) of this section may
3 contain only information reasonably necessary to accomplish the purpose for
4 which the information is disclosed.

5
6 SECTION 14. An individual who submits to a genetic test has the right
7 to know the results of that test. On the written request of the individual,
8 the group health plan issuer or other entity that performed the test shall
9 disclose the test results to the individual or to a physician designated by
10 the individual.

11
12 SECTION 15. A sample of genetic material taken for a genetic test from
13 an individual shall be destroyed promptly after the purpose for which the
14 sample was obtained is accomplished, unless:

15 (1) The sample is retained under a court order;

16 (2) The individual tested authorizes retention of the sample for
17 purposes of medical treatment or scientific research;

18 (3) For a sample obtained for research that is cleared by an
19 institutional review board, the sample is retained under the requirements that
20 the institutional review board imposes on a specific research project or as
21 authorized by the research participant with institutional review board
22 approval under federal law; or

23 (4) The sample was obtained for a screening test established by the
24 Department of Health and performed by that department or by a laboratory
25 approved by that department.

26
27 SECTION 16. A group health plan issuer that operates the plan in
28 violation of this section is subject to penalty under 20-7-101.

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30 SECTION 17. (a) No issuer of a group health plan shall require, as a
31 condition of insurance coverage, genetic testing of a child in utero without
32 the consent of the pregnant woman.

33 (b) No issuer of a group health plan shall use genetic information to
34 coerce or compel a pregnant woman to have an induced abortion.

35
36 SECTION 18. All provisions of this Act of a general and permanent

1 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
2 Code Revision Commission shall incorporate the same in the Code.

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4 SECTION 19. If any provision of this Act or the application thereof to
5 any person or circumstance is held invalid, such invalidity shall not affect
6 other provisions or applications of the Act which can be given effect without
7 the invalid provision or application, and to this end the provisions of this
8 Act are declared to be severable.

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10 SECTION 20. All laws and parts of laws in conflict with this Act are
11 hereby repealed.

12 /s/ Lendall
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