

By Mr. Cohen of Newton, petition of David B. Cohen for legislation to prohibit insurance companies from requiring genetic testing as a prerequisite for services. Insurance.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Seven.

AN ACT PROTECTING THE PRIVACY OF GENETIC RECORDS AND MEDICAL TESTS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The General Laws are hereby amended by
2 inserting after Chapter 112 the following chapter:—

3 **CHAPTER 112B.**
4 **PRIVACY OF GENETIC RECORDS AND**
5 **MEDICAL TEST RESULTS.**

6 Section 1. (a) No medical provider, clinical user or commercial
7 user (as defined in chapter 112A) or insurance company or HMO
8 or other insurer or provider of medical benefits, medical or health
9 insurance, life insurance or other insurance, may require any
10 genetic testing as a prerequisite for providing said services or
11 insurance.

12 (b) No individual may be denied health insurance, health bene-
13 fits or medical treatment based upon genetic test results or the
14 refusal to take genetic tests.

15 (c) No employer, labor organization, employment agency,
16 insurer or licensing agency may:

17 (1) solicit, require or administer a genetic test to any person as
18 a condition of employment, labor organization, insurance or licen-
19 sure.

20 (2) affect the terms, conditions or privileges of employment,
21 labor organization membership, insurance or licensure or termi-

22 nate the employment, labor organization membership, insurance
23 or licensure of any individual on the basis of a genetic test result.

24 (d) Genetic test results shall be treated as protected medical
25 records under this chapter and breach of any confidence regarding
26 any genetic test shall be punishable by fines not to exceed \$10,000
27 for each violation and imprisonment for up to 2½ years in a jail or
28 house of correction for each such violation and shall be consid-
29 ered as a violation of chapter 93A of the General Laws with a
30 harm to the subject of at least \$1,000 for each violation.

31 (e) No insurer or health care provider may deny or limit cov-
32 erage based upon any genetic test or establish coverage eligibility,
33 or require any genetic test or disclosure of genetic test informa-
34 tion, or restrict or limit continuation of coverage, enrollment or
35 contribution requirements based upon any genetic test result or
36 establish differential rates or premium payments based on genetic
37 information.

38 (f) No one shall discriminate against any individual based upon
39 genetic test information. Violation of this clause shall be punish-
40 able by fines not to exceed \$10,000 for each violation and impris-
41 onment for up to 2½ in a jail or house of correction for each such
42 violation and shall be considered as a violation of chapter 93A of
43 the General Laws with a harm to the subject of at least \$1,000 for
44 each violation.

45 (g) No genetic test shall be given by any clinical user without
46 providing counseling before such test and making counseling
47 available for post test counseling if any genetic predisposition is
48 found.

49 Section 2. A commercial user or clinical user shall not adversely
50 affect a health care practitioner or other person, directly or indi-
51 rectly, because such practitioner or person has exercised a right
52 under this chapter, disclosed information relating to a possible vio-
53 lation of this chapter, associated with or assisted a person in the
54 exercise of a right under this chapter or refused to disclose infor-
55 mation pursuant to a subject's right to privacy under this chapter
56 and otherwise, or intends to do so. Violation of this subsection
57 shall be punishable by a fine not to exceed \$10,000 for each sepa-
58 rate violation or by imprisonment not to exceed 2½ years in a jail
59 or house of correction and each such violation shall also be consid-
60 ered a violation of chapter 93A of the General Laws.

61 Section 3. (a) Any individual or the attorney general may bring
62 an action in superior court against any commercial or clinical user
63 for any violation of this chapter; seeking injunctive or declaratory
64 relief, civil penalty of not more than \$10,000 for each such viola-
65 tion or, if such violations have occurred more than once, a civil
66 penalty of not more than \$250,000 dollars and exclusion from par-
67 ticipation in any state funded health care program and loss of
68 licensure or certification offered by the Commonwealth.

69 (b) An individual who is aggrieved under this chapter may
70 bring an action in superior court against any commercial or clin-
71 ical user for any violation of this chapter; seeking injunctive or
72 declaratory relief, the greater of actual or liquidated damages of
73 not less than \$3,000 for each such violation and punitive damages.
74 If such individual is the prevailing party, the court shall award
75 him or her a reasonable attorney's fee and other litigation costs
76 and expenses, including expert witness fees incurred.

77 (c) Any civil action brought under this section shall be com-
78 menced by the later of (1) four years after the cause of action or
79 (2) four years after the cause of action was discovered.

80 (d) Any person who uses, discloses, obtains or induces another
81 to use or disclose any health information shall be punished for
82 each separate violation.

83 (1) by a fine of not more than fifty thousand (\$50,000) dollars,
84 by imprisonment not to exceed 2½ years in a jail or house of cor-
85 rection, or both,

86 (2) if the offense was committed knowingly or under false pre-
87 tenses, by a fine of not more than two hundred fifty thousand
88 (250,000) dollars, by imprisonment not to exceed 5 years in a jail
89 or house of correction or state prison, excluded from participation
90 in any state funded health care program, or any combination of
91 these penalties; or

92 (3) if the offense was committed with the intent to sell, transfer
93 or use health information for commercial advantage, personal gain
94 or to cause harm, be fined not more than five hundred thousand
95 (500,000) dollars, by imprisonment not to exceed 15 years in state
96 prison, excluded from participation in any state funded health care
97 program, or any combination of these penalties.

98 (4) and shall be liable to the subject in an amount of at least
99 \$3,000 for each violation, as such violation shall also be consid-
100 ered a violation of chapter 93A of the General Laws.

1 SECTION 2. This act shall take effect immediately as emer-
2 gency legislation.