

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE

Senate Bill 57
Finance

(Senator Forehand)

Insurance - Violation of Genetic Nondiscrimination Laws - Private Cause of Action

This bill authorizes an individual who is injured by an insurer's violation of genetic nondiscrimination laws the right to sue for specified equitable relief, damages, attorney's fees, and court costs.

Fiscal Summary

State Effect: The District Court can handle any increase in cases as a result of the bill's authorization with existing resources.

Local Effect: Circuit courts can handle any increase in cases as a result of the bill's authorization with existing resources.

Small Business Effect: None.

Analysis

Bill Summary: An individual discriminated against by an insurer based on genetic tests, the results of genetic tests, or genetic information may seek an order to reinstate insurance under the same terms and conditions that would have been applied if the violation had not occurred and damages in an amount equal to the actual damages sustained by the individual or \$10,000, whichever is greater. If an individual prevails in the action, the bill also authorizes the individual to seek court costs and reasonable attorney's fees.

Current Law: Insurers, nonprofit health service plans, and health maintenance organizations (carriers) may not use a genetic test or genetic information to reject, deny, limit, cancel, refuse to renew, increase the rates of, or affect the terms and conditions of a health insurance policy or contract. Carriers are also prohibited from requiring a genetic test or using the results from a genetic test to determine whether to issue or renew health insurance.

Chapters 631 and 632 of 2008 prohibit carriers that provide long-term care insurance from requesting or requiring a genetic test or using specified genetic information to (1) deny or limit long-term care insurance coverage; or (2) charge a different rate for the same long-term care insurance coverage unless use of the test results or information is based on sound actuarial principles.

The Insurance Commissioner has exclusive jurisdiction over underwriting and rate-setting, except for alleged discrimination based on race, creed, color, or national origin, where the Human Relations Commission has concurrent jurisdiction. Carriers in violation of genetic nondiscrimination laws are subject to monetary penalties by the Insurance Commissioner and risk their certificates of authority. The Insurance Commissioner may also order carriers to make restitution to anyone who suffered financial injury as a result of the insurer's actions.

Background: As of January 2008, eight states (Arkansas, Colorado, Georgia, Louisiana, Maine, Oklahoma, South Carolina, and Utah) provide a private cause of action to individuals damaged as a result of genetic discrimination by an insurer.

State Fiscal Effect: The District Court has exclusive jurisdiction over cases involving damages or claims of less than \$5,000. Jury trials, most cases involving equitable relief, and cases involving more than \$30,000 must be heard in circuit courts. However, plaintiffs in cases involving damages or claims of between \$5,000 and \$30,000 may elect to file their cases in circuit court, and any party to a case involving more than \$10,000 may demand a jury trial. The number of District Court cases that fall under the provisions of this bill would depend on the number of requests for a jury trial and the type of relief and amount of damages sought. While the exact number of District Court cases involving genetic discrimination by insurers cannot be determined at this time, it is assumed that any such increase can be handled with existing resources.

Local Fiscal Effect: The increase in the number of circuit court cases resulting from this bill cannot be determined at this time; however, it is assumed that any such increase can be handled with existing resources.

Additional Information

Prior Introductions: None.

Cross File: HB 11 (Delegate Manno) - Health and Government Operations.

Information Source(s): National Conference of State Legislatures, Department of Legislative Services

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ncs/kdm

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