# GENETIC TESTING LEGISLATION RELATING TO UNDERWRITING FOR LIFE INSURANCE

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In the last few years, there have been steadily increasing numbers of bills introduced in state legislatures throughout the country which have sought to regulate life insurers' underwriting practices in relation to variously defined genetic information or genetic tests. This legislation has been vigorously opposed by the life insurance industry as a threat to the continued existence of the current private system of life insurance.

The scope of the underwriting limitations proposed in the various pieces of legislation has varied usually depending upon the breadth of the definitions of the terms "genetic tests" or "genetic information." While the distinction in the breadth of the definitions is relevant to industry analysis of the scope and effect of the legislation, it does not affect strong industry opposition to any bill seeking to limit underwriting for life insurance. The process of risk classification continues to operate as the essential framework for the existing private system of life insurance. Any limitation of underwriting on the basis of genetic information or genetic tests, however defined, would jeopardize that process. Therefore, there is no definition of "genetic testing" or "genetic information" which would be acceptable to the life insurance industry if used as the basis for limiting underwriting for life insurance.

Prior to 1992, there were a number of state legislative enactments which limited or prohibited underwriting based on genetic condition, a particular genetic trait (such as Tay-Sachs trait or sickle cell trait), specific genetic characteristics, or gene carrier status. Significantly, none of these statutes, as enacted, prohibits consideration of information with significant mortality or morbidity implications. Notably, the statutes enacted in 1989 and 1991 in Arizona and Montana, respectively, only prohibit underwriting on the basis of a genetic condition if the underwriting action is not based on sound actuarial principles or reasonably anticipated experience.

By contrast, legislation, introduced beginning in 1992, has sought to limit underwriting on the basis of information with significant mortality implications. Essentially, the bills introduced in the various states in the last few years have sought to prohibit some (often just health insurers) or all insurers from underwriting on the basis of either broadly or narrowly defined genetic information or genetic tests. In this context, a "broad" definition of genetic information or genetic tests is intended to mean a definition which would include within its scope medical information or tests that have been used traditionally or historically in underwriting. A "narrow" definition is intended to include only DNA-based tests or the results of such tests.

If they had been enacted, legislative proposals seeking to prohibit life insurance underwriting based on broad definitions of genetic information or genetic tests would have prohibited underwriting on the basis of fundamentals such as family history, height, and weight. They would have prohibited use of blood tests, cholesterol tests, and blood pressure tests. In other words, such bills would have prohibited life insurers from underwriting on the basis of any information or tests relating to or for any condition with a genetic component. Such legislation would have been the equivalent of a limitation or prohibition of traditional medical underwriting. If such legislation had been enacted, insurers clearly would have been unable to assess and adequately price for risks thus necessitating major structural changes to the existing system of life insurance.

If they had been enacted, legislative proposals containing a limitation or prohibition of underwriting on the basis of narrowly defined genetic information or genetic tests also would have rendered life insurers vulnerable to severe adverse selection and would have jeopardized the current system of private life insurance. As noted above, there is no definition of genetic testing which would be acceptable to industry if used as the basis for limiting or prohibiting underwriting insurance. However, for possible use for other purposes, the following definition has been suggested by industry in various forms:

"Genetic test" means: (1) a laboratory test of human DNA or chromosomes used to identify the presence or absence of inherited alterations in genetic material which are associated with disease or illness, including carrier status; and (2) a direct measure of the alterations. "Genetic test" does not include a test of indirect manifestations of the alterations.

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Since the whole field of DNA-based technologies is still in its infancy, neither clinical medicine nor the insurance industry knows the extent to which either will make use of these technologies. However, if, as expected, DNA-based tests become standard of practice for diagnosis and prognosis of common diseases with significant mortality implications, such as heart disease, diabetes, and various forms of cancer, it is possible that life insurers will wish, and in some cases need, to use some of these tests in underwriting. Although no life insurers are now known to require DNA-based tests, as a prerequisite to coverage, if the results of any of the few currently available DNA-based tests are in an applicant's medical record and appear to be relevant, then, in order to avoid adverse selection, a life insurer is likely to use this information in the overall evaluation of risk.

In order for life insurers to avoid vulnerability to potentially severe adverse selection, it is essential that they not be prohibited from underwriting, basing their assessment on all relevant information. Given the current explosion in genetic science, life insurers are gravely concerned that a wholesale limitation or prohibition of their use of information from DNA-based technologies would significantly jeopardize their ability to appropriately select and classify risks.

Only one piece of genetic testing legislation relating to underwriting for insurance was introduced in Arizona in 1989 and a second in Montana in 1991. These statutes only limit underwriting on the basis of genetic condition if the underwriting action is not justified by sound actuarial principles or reasonable anticipated experience. In 1992, five or six genetic testing bills were introduced but the only statute enacted was in Wisconsin. It contained a narrow definition of genetic testing and applied to underwriting for health insurance only.

In 1993, roughly fifteen genetic testing bills were introduced, but only the Ohio statute was enacted that year. That law also contains a narrow definition of genetic testing and only limits underwriting for health insurance. Of the sixteen bills, either introduced in 1994 or carrying over to 1994 from 1993, only two were enacted. In California, the statute contains a narrow definition of genetic characteristics, although it is not as clear as it might be, the law is limited to underwriting of health insurance. The Colorado statute enacted in 1994 contains a narrow definition of genetic testing anf pertains to underwriting for health insurance and group disability income insurance.

In 1995, roughly 30 bills were introduced or carried over from 1994. Three were enacted. The statute enacted in Georgia contains a narrow definition of genetic testing and only limits underwriting for health insurance. The statutes enacted in Minnesota and New Hampshire contain broad definitions and also only limit underwriting for health insurance.

Significantly, none of the statutes enacted to date impose any limitations on underwriting for life insurance. (Some do impose acceptable special confidentiality and informed consent requirements of life insurers using genetic information or genetic tests.)

The life insurance industry will continue to oppose vigorously any proposed prohibition of life insurer's right to underwrite on the basis of relevant genetic information or genetic tests, regardless of their definition. Life insurers must retain this right in order to avoid the potentially devastating effect a prohibition would have on the process correctly assessing risks, which is essential to competitive product pricing in the life insurance marketplace.