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## SENATE BILL NO. 335

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Commerce and Labor)

on February 5, 1996)

(Patron Prior to Substitute—Senator Howell)

A BILL to amend and reenact § 38.2-613 of the Code of Virginia, and to amend the Code of Virginia by adding a section numbered 38.2-508.4, relating to insurance; genetic information privacy.

**Be it enacted by the General Assembly of Virginia:**

**1. That § 38.2-613 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 38.2-508.4 as follows:**

§ 38.2-508.4. Genetic information privacy.

A. As used in this section:

"Genetic characteristic" means any scientifically or medically identifiable gene or chromosome, or alteration thereof, which is known to be a cause of a disease or disorder, or determined to be associated with a statistically increased risk of development of a disease or disorder, and which is asymptomatic of any disease or disorder.

"Genetic information" means information about genes, gene products, or inherited characteristics that may derive from an individual or a family member.

"Genetic test" means a test for determining the presence or absence of genetic characteristics in an individual in order to diagnose a genetic characteristic.

B. No person proposing to issue, re-issue, or renew any policy, contract, or plan of accident and sickness insurance defined in § 38.2-109, but excluding disability income insurance, issued by any (i) insurer providing hospital, medical and surgical or major medical coverage on an expense incurred basis, (ii) corporation providing a health services plan, or (iii) health maintenance organization providing a health care plan for health care services shall, on the basis of any genetic information obtained concerning an individual or on the individual's request for genetic services, with respect to such policy, contract, or plan:

1. Terminate, restrict, limit, or otherwise apply conditions to coverage of an individual or restrict the sale to an individual;

2. Cancel or refuse to renew the coverage of an individual;

3. Exclude an individual from coverage;

4. Impose a waiting period prior to commencement of coverage of an individual;

5. Require inclusion of a rider that excludes coverage for certain benefits and services; or

6. Establish differentials in premium rates for coverage.

In addition, no discrimination shall be made in the fees or commissions of an agent or agency for an enrollment, a subscription, or the renewal of an enrollment or subscription of any person on the basis of a person's genetic characteristics which may, under some circumstances, be associated with disability in that person or that person's offspring.

C. Notwithstanding any other provisions of law, all information obtained from genetic screening or testing conducted prior to the repeal of this section shall be confidential and shall not be made public nor used in any way, in whole or in part, to cancel, refuse to issue or renew, or limit benefits under any policy, contract or plan subject to the provisions of this section.

§ 38.2-613. Disclosure limitations and conditions.

A. An insurance institution, agent, or insurance-support organization shall not disclose any personal or privileged information about an individual collected or received in connection with an insurance transaction unless the disclosure is:

1. With the written authorization of the individual, provided:

a. If the authorization is submitted by another insurance institution, agent, or insurance-support organization, the authorization meets the requirements of § 38.2-606; or

b. If the authorization is submitted by a person other than an insurance institution, agent, or insurance-support organization, the authorization is:

(1) Dated,

(2) Signed by the individual, and

(3) Obtained one year or less prior to the date a disclosure is sought pursuant to this subdivision; or

2. To a person other than an insurance institution, agent, or insurance-support organization, provided the disclosure is reasonably necessary:

a. To enable that person to perform a business, professional or insurance function for the disclosing insurance institution, agent, or insurance-support organization and that person agrees not to disclose the information further without the individual's written authorization unless the further disclosure:

- 60 (1) Would otherwise be permitted by this section if made by an insurance institution, agent, or  
61 insurance-support organization; or
- 62 (2) Is reasonably necessary for that person to perform its function for the disclosing insurance  
63 institution, agent, or insurance-support organization; or
- 64 b. To enable that person to provide information to the disclosing insurance institution, agent, or  
65 insurance-support organization for the purpose of:
- 66 (1) Determining an individual's eligibility for an insurance benefit or payment; or
- 67 (2) Detecting or preventing criminal activity, fraud, material misrepresentation, or material  
68 nondisclosure in connection with an insurance transaction; or
- 69 3. To an insurance institution, agent, or insurance-support organization, or self-insurer, provided the  
70 information disclosed is limited to that which is reasonably necessary:
- 71 a. To detect or prevent criminal activity, fraud, material misrepresentation, or material nondisclosure  
72 in connection with insurance transactions; or
- 73 b. For either the disclosing or receiving insurance institution, agent or insurance-support organization  
74 to perform its function in connection with an insurance transaction involving the individual; or
- 75 4. To a medical-care institution or medical professional for the purpose of (i) verifying insurance  
76 coverage or benefits, (ii) informing an individual of a medical problem of which the individual may not  
77 be aware or (iii) conducting an operations or services audit, provided only that information is disclosed  
78 as is reasonably necessary to accomplish the foregoing purposes; or
- 79 5. To an insurance regulatory authority; or
- 80 6. To a law-enforcement or other government authority:
- 81 a. To protect the interests of the insurance institution, agent or insurance-support organization in  
82 preventing or prosecuting the perpetration of fraud upon it; or
- 83 b. If the insurance institution, agent, or insurance-support organization reasonably believes that illegal  
84 activities have been conducted by the individual; or
- 85 c. Upon written request of any law-enforcement agency, for all insured or claimant information in the  
86 possession of an insurance institution, agent, or insurance-support organization which relates an ongoing  
87 criminal investigation, such insurance institution, agent, or insurance-support organization shall release  
88 such information, including, but not limited to, policy information, premium payment records, record of  
89 prior claims by the insured or by another claimant, and information collected in connection with an  
90 insurance company's investigation of an application or claim. Any information released to a  
91 law-enforcement agency pursuant to such request shall be treated as confidential criminal investigation  
92 information and not be disclosed further except as provided by law. Notwithstanding any provision in  
93 this chapter, no insurance institution, agent, or insurance-support organization shall notify any insured or  
94 claimant that information has been requested or supplied pursuant to this section prior to notification  
95 from the requesting law-enforcement agency that its criminal investigation is completed. Within ninety  
96 days following the completion of any such criminal investigation, the law-enforcement agency making  
97 such a request for information shall notify any insurance institution, agent, or insurance-support  
98 organization from whom information was requested that the criminal investigation has been completed.
- 99 7. Otherwise permitted or required by law; or
- 100 8. In response to a facially valid administrative or judicial order, including a search warrant or  
101 subpoena; or
- 102 9. Made for the purpose of conducting actuarial or research studies, provided:
- 103 a. No individual may be identified in any actuarial or research report, and
- 104 b. Materials allowing the individual to be identified are returned or destroyed as soon as they are no  
105 longer needed, and
- 106 c. The actuarial or research organization agrees not to disclose the information unless the disclosure  
107 would otherwise be permitted by this section if made by an insurance institution, agent, or  
108 insurance-support organization; or
- 109 10. To a party or a representative of a party to a proposed or consummated sale, transfer, merger, or  
110 consolidation of all or part of the business of the insurance institution, agent, or insurance-support  
111 organization, provided:
- 112 a. Prior to the consummation of the sale, transfer, merger, or consolidation only such information is  
113 disclosed as is reasonably necessary to enable the recipient to make business decisions about the  
114 purchase, transfer, merger, or consolidation, and
- 115 b. The recipient agrees not to disclose the information unless the disclosure would otherwise be  
116 permitted by this section if made by an insurance institution, agent, or insurance-support organization; or
- 117 11. To a person whose only use of such information will be in connection with the marketing of a  
118 product or service, provided:
- 119 a. No medical-record information, privileged information, or personal information relating to an  
120 individual's character, personal habits, mode of living, or general reputation is disclosed, and no  
121 classification derived from the information is disclosed,

b. The individual has been given an opportunity to indicate that he does not want personal information disclosed for marketing purposes and has given no indication that he does not want the information disclosed, and

c. The person receiving such information agrees not to use it except in connection with the marketing of a product or service; or

12. To an affiliate whose only use of the information will be in connection with an audit of the insurance institution or agent or the marketing of an insurance product or service, provided the affiliate agrees not to disclose the information for any other purpose or to unaffiliated persons; or

13. By a consumer reporting agency, provided the disclosure is to a person other than an insurance institution or agent; or

14. To a group policyholder for the purpose of reporting claims experience or conducting an audit of the insurance institution's or agent's operations or services, provided the information disclosed is reasonably necessary for the group policyholder to conduct the review or audit; or

15. To a professional peer review organization for the purpose of reviewing the service or conduct of a medical-care institution or medical professional; or

16. To a governmental authority for the purpose of determining the individual's eligibility for health benefits for which the governmental authority may be liable; or

17. To a certificate holder or policyholder for the purpose of providing information regarding the status of an insurance transaction; or

18. To a lienholder, mortgagee, assignee, lessor or other person shown on the records of an insurance institution or agent as having a legal or beneficial interest in a policy of insurance, provided that:

a. No medical record information is disclosed unless the disclosure would be permitted by this section; and

b. The information disclosed is limited to that which is reasonably necessary to permit such person to protect his interest in the policy.

*B. 1. No person proposing to issue, re-issue, or renew any policy, contract, or plan of accident and sickness insurance defined in § 38.2-109, but excluding disability income insurance, issued by any (i) insurer providing hospital, medical and surgical or major medical coverage on an expense incurred basis, (ii) corporation providing a health services plan, or (iii) health maintenance organization providing a health care plan for health care services shall disclose any genetic information about an individual or a member of such individual's family collected or received in connection with any insurance transaction unless the disclosure is made with the written authorization of the individual.*

*2. For the purpose of this subsection, "genetic information" means information about genes, gene products, or inherited characteristics that may derive from an individual or a family member.*

*3. Agents and insurance support organizations shall be subject to the provisions of this subsection to the extent of their participation in the issue, re-issue, or renewal of any policy, contract, or plan of accident and sickness insurance defined in § 38.2-109, but excluding disability income insurance.*

**2. That the provisions of § 38.2-508.4 shall expire on July 1, 1998.**