

Legislation offered in 130<sup>th</sup> Legislature

Potential Recommendation for Advisory Panel



Packet contains

- ORIGINAL BILL
- BILL ANALYSIS
- COMMITTEE (SPONSOR'S) AMENDMENT

# 130th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2021

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Legislative Document

No. 1085

H.P. 800

House of Representatives, March 11, 2021

### An Act Relating to the Use of Genetic Information for Insurance Purposes

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Reference to the Committee on Health Coverage, Insurance and Financial Services suggested and ordered printed.

*Robert B. Hunt*

ROBERT B. HUNT  
Clerk

Presented by Representative HYMANSON of York.  
Cosponsored by Representatives: BROOKS of Lewiston, EVANS of Dover-Foxcroft, WHITE of Waterville, Senator: CLAXTON of Androscoggin.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 24-A MRSA §2159-C**, as amended by PL 2019, c. 208, §1, is repealed.

3 **Sec. 2. 24-A MRSA §2159-F** is enacted to read:

4 **§2159-F. Genetic information for insurance purposes**

5 **1. Definitions.** As used in this section, unless the context otherwise indicates, the  
6 following terms have the following meanings.

7 A. "Genetic information" means information derived from genetic testing of an  
8 individual's genetic material or genes to determine the presence or absence of variations  
9 or mutations, including carrier status, that are scientifically or medically determined to  
10 cause a disease, disorder or syndrome, or that are associated with a statistically  
11 increased risk of developing a disease, disorder or syndrome, that is asymptomatic at  
12 the time of testing. Such genetic testing does not include routine physical examinations  
13 or chemical, blood or urine analysis, unless conducted purposefully to obtain genetic  
14 information or answer questions regarding family history.

15 B. "Health insurer" means an insurer, nonprofit hospital or medical service  
16 organization or health maintenance organization that issues individual or group  
17 hospital, health or dental insurance.

18 C. "Life insurer" means an insurer that issues life, credit life, disability, accidental  
19 injury, specified disease, hospital indemnity or credit accident insurance or annuities.

20 D. "Long-term care insurer" means an insurer that issues long-term care insurance.

21 **2. Use of genetic information.** This subsection governs the use of genetic  
22 information.

23 A. In the absence of a medical diagnosis of a disease, disorder or syndrome related to  
24 genetic information, a health insurer, life insurer or long-term care insurer may not  
25 cancel, limit or deny coverage or establish differentials in premium rates based on such  
26 genetic information.

27 B. A health insurer, life insurer or long-term care insurer may not request, require,  
28 purchase or otherwise solicit genetic information, use genetic test results or consider  
29 an individual's decisions or actions relating to genetic testing in any manner for any  
30 insurance purpose.

31 **3. Application; construction.** This section applies to policies executed, delivered,  
32 issued for delivery, continued or renewed on or after January 1, 2022. This section may  
33 not be construed as preventing a life insurer or long-term care insurer from accessing an  
34 individual's medical record as part of an application examination. This section does not  
35 prohibit a life insurer or long-term care insurer from considering a medical diagnosis  
36 included in an individual's medical record, even if a diagnosis was made based on the  
37 results of a genetic test.

38 **Sec. 3. 24-A MRSA §6981, sub-§9, ¶H**, as enacted by PL 2007, c. 447, §11, is  
39 amended to read:

1 H. The provisions of ~~sections section 2159-B and 2159-C~~ relating to discrimination  
2 against victims of domestic abuse ~~and discrimination on the basis of genetic~~  
3 ~~information or testing~~ and section 2159-F relating to the use of genetic information.

4 **Sec. 4. Effective date.** This Act takes effect January 1, 2022.

5 **SUMMARY**

6 This bill repeals current law prohibiting discrimination by insurers on the basis of  
7 genetic information or testing and enacts a provision prohibiting, after January 1, 2022,  
8 insurers that issue individual or group hospital, health or dental insurance or life, credit life,  
9 disability, long-term care, accidental injury, specified disease, hospital indemnity or credit  
10 accident insurance or annuities from canceling, limiting or denying coverage or  
11 establishing differentials in premium rates based on genetic information under certain  
12 circumstances and prohibiting such insurers from requesting, requiring, purchasing or  
13 otherwise soliciting genetic information, using genetic test results or considering a person's  
14 decisions or actions relating to genetic testing in any manner for any insurance purpose.

**LD 1085, An Act Relating to the Use of Genetic Information for Insurance Purposes**

**SUMMARY:**

The bill repeals current law prohibiting discrimination by insurers on the basis of genetic information or testing and enacts a provision prohibiting, after January 1, 2022, insurers that issue individual or group hospital, health or dental insurance or life, credit life, disability, long-term care, accidental injury, specified disease, hospital indemnity or credit accident insurance or annuities from canceling, limiting or denying coverage or establishing differentials in premium rates based on genetic information under certain circumstances and prohibiting such insurers from requesting, requiring, purchasing or otherwise soliciting genetic information, using genetic test results or considering a person's decisions or actions relating to genetic testing in any manner for any insurance purpose.

**CURRENT LAW:** Current Maine law protects individuals from *unfair* discrimination related to the use of genetic information in insurance underwriting. The law describes “unfair discrimination” as including, but not limited to, “the application of the results of a genetic test in a manner that is not reasonably related to anticipated claims experience.” See 24-A MRSA §2159-C. There are also several other instances where individuals are also protected from discrimination: §2159 relates to individuals with HIV or AIDS; §2159-A relates to individuals who are blind or have “physical or mental handicap as defined in Title 5, section 4553, subsection 7-A”; §2159-B relates to victims of domestic abuse; §2159-D relates to live organ donation; and §2159-E relates to consideration of naloxone purchase in life insurance underwriting. For health insurance plans that are not subject to underwriting, carriers may not request, require, or use genetic information for any insurance purposes under current Maine law and federal law.

## **LD 1085, An Act Relating to the Use of Genetic Information for Insurance Purposes**

**TESTIMONY:** Written testimony can be found at [this link](#)

### **ISSUES FOR CONSIDERATION:**

1. Sponsor and proponents of bill suggested that concerns about use of genetic information and genetic testing by insurers may discourage individuals from seeking genetic testing and that genetic testing at one-point in time does not reliably predict most health outcomes. Concerns also raised that use of genetic testing and information by insurers could have a disproportionate effect on people of color and increase racial disparities.
2. Federal law, the Genetic Information Nondiscrimination Act of 1997, protects individuals from discrimination on the basis of genetic information or testing by health insurers and employers, but its provisions do not apply to life insurance and long-term care insurance.
3. The Bureau of Insurance noted in its testimony that the overall market must be stable and that coverage in all lines be as available as possible, consistent with responsible underwriting practices. It stated that underwriting is an essential part of evaluating the risk that customers present, and to that end it is appropriate for insurers to have the same information as applicants have. While the Bureau suggested that insurers should not be allowed to require consumers to obtain genetic tests, a lack of balance in the information between an insurer and an insured can lead to instability in the market and result in adverse selection.

## **LD 1085, An Act Relating to the Use of Genetic Information for Insurance Purposes**

### **ISSUES FOR CONSIDERATION (cont'd):**

4. Insurance company representatives expressed concerns about adverse selection and an inability to make accurate risk assessments in underwriting. They noted that insurers should have access to complete and accurate information, including genetic test results that exist, as would be the case with any other medical test results. Denial of access to such information also would mean that some applicants with serious conditions that are not genetically linked could be denied insurance (or charged higher rates), while applicants with known serious genetic diseases could avoid disclosure and obtain life and health insurance (sometimes at lower rates). Further, such restrictions could result in the unnecessary denial of insurance to people who are potentially insurable, based on family medical history, when genetic test results could in fact ameliorate concerns about an individual's risk.
5. Sponsor has proposed an amendment to the bill that would remove the provisions applicable to health insurers, but would retain the prohibitions for insurers that issue life, credit life, disability, long-term care, accidental injury, specified disease, hospital indemnity or credit accident insurance or annuities.

### **FISCAL INFORMATION:**

Not yet determined

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Date: (Filing No. H- )

**HEALTH COVERAGE, INSURANCE AND FINANCIAL SERVICES**

Reproduced and distributed under the direction of the Clerk of the House.

**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
130TH LEGISLATURE  
FIRST SPECIAL SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 800, L.D. 1085, “An Act Relating to the Use of Genetic Information for Insurance Purposes”

Amend the bill by striking out everything after the enacting clause and inserting the following:

**Sec. 1. 24-A MRSA §2159-C, sub-§1, ¶B,** as enacted by PL 1997, c. 677, §2, is amended to read:

B. "Genetic information" means the information concerning genes, gene products or inherited characteristics that may be obtained from an individual or family member derived from genetic testing of an individual's genetic material or genes to determine the presence or absence of variations or mutations, including carrier status, that are scientifically or medically determined to cause a disease, disorder or syndrome, or that are associated with a statistically increased risk of developing a disease, disorder or syndrome, that is asymptomatic at the time of testing. Such genetic testing does not include routine physical examinations or chemical, blood or urine analysis, unless conducted purposefully to obtain genetic information or answer questions regarding family history.

**Sec. 2. 24-A MRSA §2159-C, sub-§3,** as enacted by PL 1997, c. 677, §2, is repealed.

**Sec. 3. 24-A MRSA §2159-C, sub-§3-A** is enacted to read:

**3-A. Use of genetic information in life, disability and long-term care insurance.**  
This subsection governs the use of genetic information by an insurer in the issuance, withholding, extension or renewal of an insurance policy for life, credit life, disability, long-term care, accidental injury, specified disease, hospital indemnity or credit accident insurance or an annuity.

A. In the absence of a medical diagnosis of a disease, disorder or syndrome related to genetic information, an insurer may not cancel, limit or deny coverage or establish differentials in premium rates based on such genetic information.

**COMMITTEE AMENDMENT**

1 B. An insurer may not request, require, purchase or otherwise solicit genetic  
2 information, use genetic test results or consider an individual's decisions or actions  
3 relating to genetic testing in any manner for any insurance purpose.

4 This subsection may not be construed as preventing an insurer from accessing an  
5 individual's medical record as part of an application examination. This subsection does not  
6 prohibit an insurer from considering a medical diagnosis included in an individual's  
7 medical record, even if a diagnosis was made based on the results of a genetic test.

8 **Sec. 4. Application.** This Act applies to all policies, contracts and certificates  
9 executed, delivered, issued for delivery, continued or renewed in this State on or after  
10 January 1, 2022. For purposes of this Act, all contracts are deemed to be renewed no later  
11 than the next yearly anniversary of the contract date.'

12 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section  
13 number to read consecutively.

14 **SUMMARY**

15 This amendment, which is the minority report of the committee, replaces the bill. The  
16 amendment removes the provisions of the bill that applied to health insurance. The  
17 amendment retains the requirement in the bill prohibiting, after January 1, 2022, insurers  
18 that issue life, credit life, disability, long-term care, accidental injury, specified disease,  
19 hospital indemnity or credit accident insurance or annuities from canceling, limiting or  
20 denying coverage or establishing differentials in premium rates based on genetic  
21 information under certain circumstances and prohibiting such insurers from requesting,  
22 requiring, purchasing or otherwise soliciting genetic information, using genetic test results  
23 or considering a person's decisions or actions relating to genetic testing in any manner for  
24 any insurance purpose.