

Senate, April 6, 1998. The Committee on Labor and Public Employees reported through SEN. PRAGUE, 19th DIST., Chairman of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT PROHIBITING DISCRIMINATION IN THE PROVISION OF DISABILITY INSURANCE ON THE BASIS OF GENETIC INFORMATION.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 38a-816 of the general statutes, as
2 amended by public act 97-95, section 3 of public
3 act 97-126 and section 13 of public act 97-202, is
4 repealed and the following is substituted in lieu
5 thereof:

6 The following are defined as unfair methods
7 of competition and unfair and deceptive acts or
8 practices in the business of insurance:

9 (1) Misrepresentations and false advertising
10 of insurance policies. Making, issuing or
11 circulating, or causing to be made, issued or
12 circulated, any estimate, illustration, circular
13 or statement, sales presentation, omission or
14 comparison which: (a) Misrepresents the benefits,
15 advantages, conditions or terms of any insurance
16 policy; (b) misrepresents the dividends or share
17 of the surplus to be received, on any insurance
18 policy; (c) makes any false or misleading
19 statements as to the dividends or share of surplus
20 previously paid on any insurance policy; (d) is
21 misleading or is a misrepresentation as to the

22 financial condition of any person, or as to the
23 legal reserve system upon which any life insurer
24 operates; (e) uses any name or title of any
25 insurance policy or class of insurance policies
26 misrepresenting the true nature thereof; (f) is a
27 misrepresentation for the purpose of inducing or
28 tending to induce to the lapse, forfeiture,
29 exchange, conversion or surrender of any insurance
30 policy; (g) is a misrepresentation for the purpose
31 of effecting a pledge or assignment of or
32 effecting a loan against any insurance policy; or
33 (h) misrepresents any insurance policy as being
34 shares of stock.

35 (2) False information and advertising
36 generally. Making, publishing, disseminating,
37 circulating or placing before the public, or
38 causing, directly or indirectly, to be made,
39 published, disseminated, circulated or placed
40 before the public, in a newspaper, magazine or
41 other publication, or in the form of a notice,
42 circular, pamphlet, letter or poster, or over any
43 radio or television station, or in any other way,
44 an advertisement, announcement or statement
45 containing any assertion, representation or
46 statement with respect to the business of
47 insurance or with respect to any person in the
48 conduct of his insurance business, which is
49 untrue, deceptive or misleading.

50 (3) Defamation. Making, publishing,
51 disseminating or circulating, directly or
52 indirectly, or aiding, abetting or encouraging the
53 making, publishing, disseminating or circulating
54 of, any oral or written statement or any pamphlet,
55 circular, article or literature which is false or
56 maliciously critical of or derogatory to the
57 financial condition of an insurer, and which is
58 calculated to injure any person engaged in the
59 business of insurance.

60 (4) Boycott, coercion and intimidation.
61 Entering into any agreement to commit, or by any
62 concerted action committing, any act of boycott,
63 coercion or intimidation resulting in or tending
64 to result in unreasonable restraint of, or
65 monopoly in, the business of insurance.

66 (5) False financial statements. Filing with
67 any supervisory or other public official, or
68 making, publishing, disseminating, circulating or
69 delivering to any person, or placing before the

70 public, or causing, directly or indirectly, to be
71 made, published, disseminated, circulated or
72 delivered to any person, or placed before the
73 public, any false statement of financial condition
74 of an insurer with intent to deceive; or making
75 any false entry in any book, report or statement
76 of any insurer with intent to deceive any agent or
77 examiner lawfully appointed to examine into its
78 condition or into any of its affairs, or any
79 public official to whom such insurer is required
80 by law to report, or who has authority by law to
81 examine into its condition or into any of its
82 affairs, or, with like intent, wilfully omitting
83 to make a true entry of any material fact
84 pertaining to the business of such insurer in any
85 book, report or statement of such insurer.

86 (6) Unfair claim settlement practices.
87 Committing or performing with such frequency as to
88 indicate a general business practice any of the
89 following: (a) Misrepresenting pertinent facts or
90 insurance policy provisions relating to coverages
91 at issue; (b) failing to acknowledge and act with
92 reasonable promptness upon communications with
93 respect to claims arising under insurance
94 policies; (c) failing to adopt and implement
95 reasonable standards for the prompt investigation
96 of claims arising under insurance policies; (d)
97 refusing to pay claims without conducting a
98 reasonable investigation based upon all available
99 information; (e) failing to affirm or deny
100 coverage of claims within a reasonable time after
101 proof of loss statements have been completed; (f)
102 not attempting in good faith to effectuate prompt,
103 fair and equitable settlements of claims in which
104 liability has become reasonably clear; (g)
105 compelling insureds to institute litigation to
106 recover amounts due under an insurance policy by
107 offering substantially less than the amounts
108 ultimately recovered in actions brought by such
109 insureds; (h) attempting to settle a claim for
110 less than the amount to which a reasonable man
111 would have believed he was entitled by reference
112 to written or printed advertising material
113 accompanying or made part of an application; (i)
114 attempting to settle claims on the basis of an
115 application which was altered without notice to,
116 or knowledge or consent of the insured; (j) making
117 claims payments to insureds or beneficiaries not

118 accompanied by statements setting forth the
119 coverage under which the payments are being made;
120 (k) making known to insureds or claimants a policy
121 of appealing from arbitration awards in favor of
122 insureds or claimants for the purpose of
123 compelling them to accept settlements or
124 compromises less than the amount awarded in
125 arbitration; (l) delaying the investigation or
126 payment of claims by requiring an insured,
127 claimant, or the physician of either to submit a
128 preliminary claim report and then requiring the
129 subsequent submission of formal proof of loss
130 forms, both of which submissions contain
131 substantially the same information; (m) failing to
132 promptly settle claims, where liability has become
133 reasonably clear, under one portion of the
134 insurance policy coverage in order to influence
135 settlements under other portions of the insurance
136 policy coverage; (n) failing to promptly provide a
137 reasonable explanation of the basis in the
138 insurance policy in relation to the facts or
139 applicable law for denial of a claim or for the
140 offer of a compromise settlement; (o) using as a
141 basis for cash settlement with a first party
142 automobile insurance claimant an amount which is
143 less than the amount which the insurer would pay
144 if repairs were made unless such amount is agreed
145 to by the insured or provided for by the insurance
146 policy.

147 (7) Failure to maintain complaint handling
148 procedures. Failure of any person to maintain
149 complete record of all the complaints which it has
150 received since the date of its last examination.
151 This record shall indicate the total number of
152 complaints, their classification by line of
153 insurance, the nature of each complaint, the
154 disposition of these complaints, and the time it
155 took to process each complaint. For purposes of
156 this subsection "complaint" shall mean any written
157 communication primarily expressing a grievance.

158 (8) Misrepresentation in insurance
159 applications. Making false or fraudulent
160 statements or representations on or relative to an
161 application for an insurance policy for the
162 purpose of obtaining a fee, commission, money or
163 other benefit from any insurer, producer or
164 individual.

165 (9) Any violation of any one of sections
166 38a-358, 38a-446, 38a-447, 38a-488, 38a-825,
167 38a-826, 38a-828 and 38a-829. None of the
168 following practices shall be considered
169 discrimination within the meaning of section
170 38a-446 or 38a-488 or a rebate within the meaning
171 of section 38a-825: (a) Paying bonuses to
172 policyholders or otherwise abating their premiums
173 in whole or in part out of surplus accumulated
174 from nonparticipating insurance, provided any such
175 bonuses or abatement of premiums shall be fair and
176 equitable to policyholders and for the best
177 interests of the company and its policyholders;
178 (b) in the case of policies issued on the
179 industrial debit plan, making allowance to
180 policyholders who have continuously for a
181 specified period made premium payments directly to
182 an office of the insurer in an amount which fairly
183 represents the saving in collection expense; (c)
184 readjustment of the rate of premium for a group
185 insurance policy based on loss or expense
186 experience, or both, at the end of the first or
187 any subsequent policy year, which may be made
188 retroactive for such policy year.

189 (10) Notwithstanding any provision of any
190 policy of insurance, certificate or service
191 contract, whenever such insurance policy or
192 certificate or service contract provides for
193 reimbursement for any services which may be
194 legally performed by any practitioner of the
195 healing arts licensed to practice in this state,
196 reimbursement under such insurance policy,
197 certificate or service contract shall not be
198 denied because of race, color or creed nor shall
199 any insurer make or permit any unfair
200 discrimination against particular individuals or
201 persons so licensed.

202 (11) Favored agent or insurer: Coercion of
203 debtors. (a) No person may (i) require, as a
204 condition precedent to the lending of money or
205 extension of credit, or any renewal thereof, that
206 the person to whom such money or credit is
207 extended or whose obligation the creditor is to
208 acquire or finance, negotiate any policy or
209 contract of insurance through a particular insurer
210 or group of insurers or producer or group of
211 producers; (ii) unreasonably disapprove the
212 insurance policy provided by a borrower for the

213 protection of the property securing the credit or
214 lien; or (iii) require directly or indirectly that
215 any borrower, mortgagor, purchaser, insurer or
216 producer pay a separate charge, in connection with
217 the handling of any insurance policy required as
218 security for a loan on real estate or pay a
219 separate charge to substitute the insurance policy
220 of one insurer for that of another; (iv) use or
221 disclose information resulting from a requirement
222 that a borrower, mortgagor or purchaser furnish
223 insurance of any kind on real property being
224 conveyed or used as collateral security to a loan,
225 when such information is to the advantage of the
226 mortgagee, vendor or lender, or is to the
227 detriment of the borrower, mortgagor, purchaser,
228 insurer or the producer complying with such a
229 requirement. (b) (i) Subsection (a) (iii) does not
230 include the interest which may be charged on
231 premium loans or premium advancements in
232 accordance with the security instrument. (ii) For
233 purposes of subsection (a) (ii), such disapproval
234 shall be deemed unreasonable if it is not based
235 solely on reasonable standards uniformly applied,
236 relating to the extent of coverage required and
237 the financial soundness and the services of an
238 insurer. Such standards shall not discriminate
239 against any particular type of insurer, nor shall
240 such standards call for the disapproval of an
241 insurance policy because such policy contains
242 coverage in addition to that required. (iii) The
243 commissioner may investigate the affairs of any
244 person to whom this subsection applies to
245 determine whether such person has violated this
246 subsection. If a violation of this subsection is
247 found, the person in violation shall be subject to
248 the same procedures and penalties as are
249 applicable to other provisions of section 38a-815,
250 subsections (b) and (e) of section 38a-817 and
251 this section. (iv) For purposes of this section,
252 "person" includes any individual, corporation,
253 limited liability company, association,
254 partnership or other legal entity.

255 (12) Refusing to insure, refusing to continue
256 to insure or limiting the amount, extent or kind
257 of coverage available to an individual or charging
258 an individual a different rate for the same
259 coverage because of physical disability or mental
260 retardation, except where the refusal, limitation

261 or rate differential is based on sound actuarial
262 principles or is related to actual or reasonably
263 anticipated experience.

264 (13) Refusing to insure, refusing to continue
265 to insure or limiting the amount, extent or kind
266 of coverage available to an individual or charging
267 an individual a different rate for the same
268 coverage solely because of blindness or partial
269 blindness. For purposes of this subdivision,
270 "refusal to insure" includes the denial by an
271 insurer of disability insurance coverage on the
272 grounds that the policy defines "disability" as
273 being presumed in the event that the insured is
274 blind or partially blind, except that an insurer
275 may exclude from coverage any disability,
276 consisting solely of blindness or partial
277 blindness, when such condition existed at the time
278 the policy was issued. Any individual who is blind
279 or partially blind shall be subject to the same
280 standards of sound actuarial principles or actual
281 or reasonably anticipated experience as are
282 sighted persons with respect to all other
283 conditions, including the underlying cause of the
284 blindness or partial blindness.

285 (14) Refusing to insure, refusing to continue
286 to insure or limiting the amount, extent or kind
287 of coverage available to an individual or charging
288 an individual a different rate for the same
289 coverage because of exposure to diethylstilbestrol
290 through the female parent.

291 (15) Failure to pay accident and health
292 claims within forty-five days of receipt by an
293 insurer of the claimant's proof of loss form
294 unless the Insurance Commissioner determines that
295 a legitimate dispute exists as to coverage,
296 liability or damages or that the claimant has
297 fraudulently caused or contributed to the loss.
298 Any insurer who fails to pay such a claim within
299 the forty-five-day period shall pay the claimant
300 the amount of such claim plus interest at the rate
301 of fifteen per cent per annum, in addition to any
302 other penalties which may be imposed pursuant to
303 sections 38a-11, 38a-25, 38a-41 to 38a-53,
304 inclusive, 38a-57 to 38a-60, inclusive, 38a-62 to
305 38a-65, inclusive, 38a-76, 38a-83, 38a-84, 38a-117
306 to 38a-124, inclusive, 38a-129 to 38a-140,
307 inclusive, 38a-146 to 38a-155, inclusive, 38a-283,
308 38a-288 to 38a-290, inclusive, 38a-319, 38a-320,

309 AS AMENDED, 38a-459, 38a-464, 38a-815 to 38a-819,
310 inclusive, 38a-824 to 38a-826, inclusive, and
311 38a-828 to 38a-831, inclusive. Whenever the
312 interest due a claimant pursuant to this section
313 is less than one dollar, the insurer shall deposit
314 such amount in a separate interest-bearing account
315 in which all such amounts shall be deposited. At
316 the end of each calendar year each such insurer
317 shall donate one-half of such amount to The
318 University of Connecticut Health Center and
319 one-half of such amount to Uncas-on-Thames
320 Hospital.

321 (16) Failure to pay, as part of any claim for
322 a damaged motor vehicle under any automobile
323 insurance policy where the vehicle has been
324 declared to be a constructive total loss, an
325 amount equal to the sum of (A) the settlement
326 amount on such vehicle plus, whenever the insurer
327 takes title to such vehicle, (B) an amount
328 determined by multiplying such settlement amount
329 by a percentage equivalent to the current sales
330 tax rate established in section 12-408, AS
331 AMENDED. For purposes of this subdivision,
332 "constructive total loss" means the cost to repair
333 or salvage damaged property, or the cost to both
334 repair and salvage such property, equals or
335 exceeds the total value of the property at the
336 time of the loss.

337 (17) Any violation of section 42-260, AS
338 AMENDED, by an extended warranty provider subject
339 to the provisions of said section, including, but
340 not limited to: (A) Failure to include all
341 statements required in subsections (c) and (f) of
342 section 42-260, AS AMENDED, in an issued extended
343 warranty; (B) offering an extended warranty
344 without being (i) insured under an adequate
345 extended warranty reimbursement insurance policy
346 or (ii) able to demonstrate that reserves for
347 claims contained in the provider's financial
348 statements are not in excess of one-half the
349 provider's audited net worth; (C) failure to
350 submit a copy of an issued extended warranty form
351 or a copy of such provider's extended warranty
352 reimbursement policy form to the Insurance
353 Commissioner.

354 (18) With respect to an insurance company,
355 hospital service corporation, health care center
356 or fraternal benefit society providing individual

357 or group health insurance coverage of the types
358 specified in subdivisions (1), (2), (4), (6),
359 (10), (11) and (12) of section 38a-469, refusing
360 to insure, refusing to continue to insure or
361 limiting the amount, extent or kind of coverage
362 available to an individual or charging an
363 individual a different rate for the same coverage
364 because such individual has been a victim of
365 family violence.

366 (19) With respect to an insurance company,
367 hospital service corporation, health care center
368 or fraternal benefit society providing INDIVIDUAL
369 OR GROUP DISABILITY INSURANCE COVERAGE OR
370 individual or group health insurance coverage of
371 the types specified in subdivisions (1), (2), (3),
372 (4), (5), (6), (9), (10), (11) and (12) of section
373 38a-469, refusing to insure, refusing to continue
374 to insure or limiting the amount, extent or kind
375 of coverage available to an individual or charging
376 an individual a different rate for the same
377 coverage because of genetic information. Genetic
378 information indicating a predisposition to a
379 disease or condition shall not be deemed a
380 preexisting condition in the absence of a
381 diagnosis of such disease or condition that is
382 based on other medical information. An insurance
383 company, hospital service corporation, health care
384 center or fraternal benefit society providing
385 individual DISABILITY OR health coverage of the
386 types specified in subdivisions (1), (2), (3),
387 (4), (5), (6), (9), (10), (11) and (12) of section
388 38a-469, shall not be prohibited from refusing to
389 insure or applying a preexisting condition
390 limitation, to the extent permitted by law, to an
391 individual who has been diagnosed with a disease
392 or condition based on medical information other
393 than genetic information and has exhibited
394 symptoms of such disease or condition. For the
395 purposes of this subsection, "genetic information"
396 means the information about genes, gene products
397 or inherited characteristics that may derive from
398 an individual or family member.

399 (20) Any violation of subsection (a) of
400 section 38a-11, AS AMENDED, sections 38a-465 to
401 38a-465m, inclusive, and subdivision (19) of
402 section 38a-816, AS AMENDED.

403 LAB COMMITTEE VOTE: YEA 8 NAY 5 JFS

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"THE FOLLOWING FISCAL IMPACT STATEMENT AND BILL ANALYSIS ARE PREPARED FOR THE BENEFIT OF MEMBERS OF THE GENERAL ASSEMBLY, SOLELY FOR PURPOSES OF INFORMATION, SUMMARIZATION AND EXPLANATION AND DO NOT REPRESENT THE INTENT OF THE GENERAL ASSEMBLY OR EITHER HOUSE THEREOF FOR ANY PURPOSE."

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FISCAL IMPACT STATEMENT - BILL NUMBER sSB 85

STATE IMPACT Potential Revenue Gain (General Fund), Potential Workload Increase (Insurance Fund), Within Anticipated Budgetary Resources, see explanation below

MUNICIPAL IMPACT None

STATE AGENCY(S) Department of Insurance

STATE IMPACT: The bill specifies that a number of activities by medical coverage providers constitute unfair methods of competition and deception practices or acts. These are providers of individual and group disability insurance. These activities include:

- 1) Limiting the amount or kind of coverage
- 2) Refusing to insure or continue to insure
- 3) Charging a different rate for the same coverage
- 4) Considering genetic information a preexisting condition without other medical information

The insurance commissioner may order individual or group disability coverage providers to stop with this practice and pay penalties from \$1,000 to \$5,000 per act. They also could be ordered to pay penalties up to \$50,000 for six months.

There is a workload increase for the Department of Insurance associated with ordering penalties for violators. This can be handled within resources.

There is also a potential revenue gain for the state's General Fund associated with the possibility of collecting penalties.

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OLR BILL ANALYSIS

sSB 85

AN ACT PROHIBITING DISCRIMINATION IN THE PROVISION OF DISABILITY INSURANCE ON THE BASIS OF GENETIC INFORMATION

SUMMARY: This bill makes it an unfair method of competition and an unfair and deceptive practice or act for a medical coverage provider offering individual or group disability insurance to take the following actions because of genetic information: (1) refuse to insure or continue to insure; (2) limit the amount, extent, or kind of coverage; (3) charge a different rate for the same coverage; or (4) consider genetic information indicating a predisposition to a disease or condition as a preexisting condition without a diagnosis based on other medical information. The insurance commissioner, under current law, may order anyone using an unfair method of competition or unfair and deceptive practice to stop; pay a penalty of \$1,000 to \$5,000 per act, up to \$50,000 maximum in six months; or surrender his license.

The bill does not bar a provider of individual disability insurance from refusing to insure or applying a legal preexisting condition limitation to someone who shows symptoms of a disease or condition diagnosed through non-genetic medical information.

Under current law applicable to the bill, "genetic information" means information about genes, gene products, or inherited characteristics that may derive from an individual or family member.

The bill applies to insurance companies, hospital service corporations, health maintenance organizations, and fraternal benefit societies.

EFFECTIVE DATE: October 1, 1998

COMMITTEE ACTION

Labor and Public Employees

Joint Favorable Substitute
Yea 8 Nay 5