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**House Committee on Commerce and Economic Development**  
**Vermont State House**  
**April 19, 2022**

**RE: S.247, An act relating to prohibiting discrimination based on genetic information**

Thank you for the opportunity to comment on S. 247. The Department of Financial Regulation applauds the intent to enhance consumer protections but does not support the bill in its current form because it would prevent insurers of certain voluntary insurance products from accessing information needed to understand the risk it may be taking in issuing an individual policy, and may result in increased costs and decreased availability of these products in Vermont. The Department has some suggested changes designed to provide additional consumer privacy protections while still allowing for the exchange of medical information necessary to accurately assess and underwrite risk.

This bill would disallow life, long-term care, and disability insurers from using genetic test information of an applicant or their family members if the information has not resulted in a medical diagnosis. Vermont already has strong protections in place for when and how insurance companies can access or use genetic information. 18 V.S.A. § 9332 prevents insurers from underwriting or conditioning insurance on the requirement to undergo genetic testing or on the results of genetic testing of a family member unless those results are in the individual's medical record. 8 V.S.A. § 4724 provides that insurers may not unfairly discriminate against an individual by conditioning rates or the provision or renewal of coverage based on medical information, including the results of genetic testing, where there is not a relationship between the medical information and the cost of the insurance risk that the insurer would assume by insuring the proposed insured. As a result, under current law, if an insurer were to use genetic test information to condition rates, there must be a relationship based on actual or reasonably anticipated experience between the genetic test results and the cost of insurance risk.

It is also important to note that health insurers may not use genetic test information to determine eligibility, cost, or benefits of health insurance under federal law. Health insurance is not an element of this bill, but concerns related to health insurance coverage or costs may be a consumer concern related to potential use of their genetic information. Additionally, while several states have laws in place that limit the use of genetic test information, many of those state laws are similar to what Vermont already has in place. Florida is the only state with a prohibition comparable to S. 247 (note: Florida's law was effective in summer 2021, and it is too early to study or understand market impact).



While S. 247 would allow access to test information that has resulted in a diagnosis, it denies access to test information that may be predictive of significant risk but has not yet resulted in a diagnosis. Life, long-term care, and disability insurers have historically used a holistic view of individual's health information to inform underwriting and risk classifications for their respective products. Disallowing the use of genetic test information in a favorable or unfavorable manner when issuing a policy would potentially put insurer solvency at risk as well impact product availability in Vermont because of adverse selection. Individuals undergoing genetic testing and receiving results indicating a disease or other health condition would be permitted to purchase a life insurance policy without the insurer being able to properly underwrite the individual. Putting insurers in a position where they do not fully understand the risk they are insuring can place upward pressure on premium due to higher claims volume. In the case of long-term care insurers, the risk of collecting insufficient premium poses serious solvency risk to companies and the market which is already seeing severe premium increases due to unforeseen health outcomes of the insured populations. Preventing life, long-term care, and disability insurers from accessing genetic test information or other relevant medical information undermines the ability to accurately price insurance products because of a lack of access to complete information.

The Department recognizes that some consumers may feel worried about how genetic test results may impact their ability to obtain or afford certain insurance policies, and that genetic testing is in the early stages of becoming a more routine part of medical diagnosis and care. The Department proposes an alternative approach that balances these consumer protections with the need for insurers to accurately understand risk. First, we generally support the language in the bill as passed by House Health Care that would prevent an insurer from asking about or using information from direct-to-consumer genetic testing. We believe that only information that is part of a medical record (ie, test data used for diagnostic or medical treatment purposes) is most needed and reliable for accurate underwriting. Second, we suggest prohibiting insurers from asking open ended questions on applications related to genetic testing and information, and only allowing insurers to use genetic information which is contained in an individual's medical record. For example, an insurer could not ask whether the applicant has taken any at-home or medical genetic tests, or whether any testing suggested risk of certain diseases. This is a similar approach to how HIV information can be solicited when applying for insurance. Insurers are not allowed to ask whether an individual has taken an HIV test.<sup>1</sup> This approach will provide applicants with more privacy and will, in many cases, enable applicants to purchase life, long-term care, or disability insurance without any genetic test information being disclosed or reviewed. Many policies are sold without the insurance company reviewing the applicant's medical record. Where the insurer is reviewing a medical record to underwrite a policy (usually because of a large policy amount or because of the applicant's age/health), the insurer would then have access to a complete health history and any genetic test information is reviewed in the same manner as any other medical test in the record.

DFR does not take a position on the provisions of the bill that are not related to insurance.

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<sup>1</sup> Title 8 V.S.A. Section 4724(20)(A)

*Suggested language*

DFR suggests replacing the insurance-related sections of the bill (4, 5, 6 and 8 as passed by the House Committee on Health Care) with the following:

**8 V.S.A. § 4724 is amended to read:**

(22)(C): No person shall request or require in an application for insurance that a person reveal having undergone genetic testing in the past, or request or require in an application for insurance information about the results of such genetic testing.

(22)(D): No person shall request, require, purchase, or use information obtained from an entity providing direct-to-consumer genetic testing without the informed written consent of the individual who has been tested.