

By Representative Diaz de la Portilla

1 A bill to be entitled
2 An act relating to genetic testing for
3 insurance purposes; amending s. 627.401, F.S.;
4 providing applicability of provisions
5 regulating insurance contracts to s. 627.4301,
6 F.S.; creating s. 627.4301, F.S.; prohibiting
7 insurers from requiring or using certain
8 information derived from genetic testing of
9 insureds or insurance applicants; requiring
10 insurers that obtain such information to
11 maintain its confidentiality; amending s.
12 632.638, F.S.; providing applicability of s.
13 627.4301, F.S., to fraternal benefit societies;
14 creating s. 636.0201, F.S.; providing
15 applicability of s. 627.4301, F.S., to prepaid
16 limited health service organizations; amending
17 s. 641.30, F.S.; providing applicability of s.
18 627.4301, F.S., to health maintenance
19 organizations; creating s. 641.438, F.S.;
20 providing applicability of s. 627.4301, F.S.,
21 to prepaid health clinics; amending s. 760.40,
22 F.S.; defining the term "genetic testing";
23 providing standards for informed consent;
24 providing for confidentiality of records;
25 providing civil and criminal penalties;
26 providing an effective date.

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28 Be It Enacted by the Legislature of the State of Florida:

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30 Section 1. Section 627.401, Florida Statutes, is
31 amended to read:

1 627.401 Scope of this part.--~~No provision of This part~~
2 ~~<U>does not apply of this chapter applies~~ to:
3 (1) Reinsurance, except s. 627.4301.
4 (2) Policies or contracts not issued for delivery in
5 this state nor delivered in this state, except as otherwise
6 provided in this code.
7 (3) Wet marine and transportation insurance, except
8 ss. 627.409, 627.420, and 627.428.
9 (4) Title insurance, except ss. 627.406, 627.415,
10 627.416, 627.419, 627.427, and 627.428.
11 (5) Credit life or credit disability insurance, except
12 ss. 627.419(5) and 627.428.
13 Section 2. Section 627.4301, Florida Statutes, is
14 created to read:
15 627.4301 Genetic testing for insurance purposes.--
16 (1) DEFINITIONS.--As used in this section, the term:
17 (a) "Genetic test" means a test to determine the
18 presence of mutations or variations in an individual's DNA
19 associated with clinically recognized diseases or disorders by
20 analysis of an individual's DNA. Genetic testing does not
21 include routine physical examinations; chemical, blood, and
22 urine analysis; tests for abuse of drugs; and tests for the
23 presence of the human immunodeficiency virus.
24 (b) "Insurer" means an insurer as defined in s.
25 624.03, a self-insured plan as defined in s. 624.031, a
26 multiple-employer welfare arrangement as defined in s.
27 624.437, a prepaid limited health service organization as
28 defined in s. 636.003, a health maintenance organization as
29 defined in s. 641.19, a prepaid health clinic as defined in s.
30 641.402, a fraternal benefit society as defined in s. 632.601,
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1 an accountable health partnership as defined in s. 408.701, or
2 any health care arrangement whereby risk is assumed.

3 (2) USE OF GENETIC TESTS.--

4 (a) Insurers may not require or solicit genetic tests,
5 use or review genetic test results, or consider a person's
6 decisions or actions relating to genetic testing in any manner
7 for any insurance purpose.

8 (b) Insurers may not solicit or use genetic test
9 results from a person's blood relatives for underwriting or
10 any other insurance purpose.

11 (3) PRIVACY OF GENETIC INFORMATION.--If an insurer
12 obtains information regarding the results of a person's
13 genetic test, the insurer is governed by all provisions of s.
14 760.40, relating to confidentiality of genetic test
15 information. Test results may not be furnished to an
16 insurer-industry data bank if a review of the information
17 would identify the person tested.

18 (4) This section does not apply to the underwriting or
19 issuance of a life insurance policy, disability income policy,
20 or long-term care policy or any other actions of an insurer
21 directly related to a life insurance policy, disability income
22 policy, or long-term care policy.

23 Section 3. Section 632.638, Florida Statutes, is
24 amended to read:

25 632.638 Applicability of other code provisions.--In
26 addition to the other provisions ~~heretofore~~ contained or
27 referred to in this chapter, the following ~~other~~ chapters and
28 provisions of this code ~~shall~~ apply to fraternal benefit
29 societies, to the extent applicable and not in conflict with
30 the express provisions of this chapter and the reasonable
31 implications thereof, ~~as follows:~~

- 1 (1) Part I of chapter 624;
- 2 (2) Part II of chapter 624;
- 3 (3) Sections 624.404, 624.415, 624.416, 624.418,
- 4 624.420, 624.421, 624.4211, 624.422, and 624.423;
- 5 (4) Section 624.501;
- 6 (5) Part I of chapter 626;
- 7 (6) Part III of chapter 626;
- 8 (7) Part IV of chapter 626;
- 9 (8) Sections 626.901 through 626.912;
- 10 (9) Part VIII of chapter 626, subject to the
- 11 limitations set forth in former s. 632.341;
- 12 (10) Section 627.424;
- 13 (11) Section 627.428;
- 14 (12) Section 627.4301;
- 15 (13)~~(12)~~ Section 627.479; and
- 16 (14)~~(13)~~ Part I of chapter 631.

17 Section 4. Section 636.0201, Florida Statutes, is
18 created to read:

19 636.0201 Genetic testing restrictions.--A prepaid
20 limited health service organization must comply with the
21 provisions of s. 627.4301.

22 Section 5. Subsection (5) is added to section 641.30,
23 Florida Statutes, to read:

24 641.30 Construction and relationship to other laws.--
25 (5) Every health maintenance organization must comply
26 with s. 627.4301.

27 Section 6. Section 641.438, Florida Statutes, is
28 created to read:

29 641.438 Genetic testing restrictions.--A prepaid
30 health clinic must comply with the provisions of s. 627.4301.

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1 Section 7. Section 760.40, Florida Statutes, is
2 amended to read:

3 760.40 Genetic testing; informed consent;
4 confidentiality.--

5 (1) As used in this section, the term "genetic
6 testing" means testing to determine the presence of mutations
7 or variations in an individual's DNA associated with
8 clinically recognized diseases or disorders by analysis of an
9 individual's DNA. Genetic testing does not include routine
10 physical examinations; chemical, blood, and urine analysis;
11 tests for abuse of drugs; and tests for the presence of the
12 human immunodeficiency virus. ~~"DNA analysis" means the medical~~
13 ~~and biological examination and analysis of a person to~~
14 ~~identify the presence and composition of genes in that~~
15 ~~person's body.~~ The term includes DNA typing and genetic
16 testing performed before January 1, 1998, pursuant to s.
17 383.14.

18 (2)(a) Except for purposes of criminal prosecution,
19 except for purposes of determining paternity as provided in s.
20 742.12(1), and except for purposes of acquiring specimens from
21 persons convicted of certain offenses as provided in s.
22 943.325, genetic testing ~~DNA analysis~~ may be performed only
23 with the informed consent of the person to be tested, and the
24 results of such genetic testing ~~DNA analysis~~, whether held by
25 a public or private entity, are the exclusive property of the
26 person tested, are confidential, and may not be disclosed
27 without the consent of the person tested. Such information
28 held by a public entity is exempt from the provisions of s.
29 119.07(1) and s. 24(a), Art. I of the State Constitution.

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1 (b) Informed consent must be given in writing, and,
2 before informed consent is given, the person being tested must
3 be informed that:

4 1. The test results could be inconclusive;

5 2. The test results could preclude the tested person
6 from obtaining life insurance or disability income insurance
7 and could restrict the tested person from types of employment;

8 3. The test results may not be disclosed without the
9 consent of the person tested; and

10 4. State law provides both civil and criminal
11 penalties for the unauthorized disclosure of the results of
12 genetic testing.

13 (c) The results of genetic testing do not constitute
14 medical records and may not be released pursuant to a
15 consensual or nonconsensual release of medical records. Each
16 disclosure of the results of genetic testing requires a
17 separate written consent to release only for the specific
18 purpose stated in the written consent.

19 (d)~~(b)~~ A person who violates paragraph (a), paragraph
20 (b), or paragraph (c) is guilty of a misdemeanor of the first
21 degree, punishable as provided in s. 775.082 or s. 775.083.

22 (e) In addition to the penalty provided in paragraph
23 (d), a person who violates paragraph (a), paragraph (b), or
24 paragraph (c) is civilly liable to the person whose genetic
25 testing results were disclosed for actual damages and an
26 additional civil penalty of \$2,500 for a nonwillful violation
27 and \$10,000 for a willful violation. In any action brought
28 under this paragraph, the prevailing party is entitled to
29 recover attorney's fees and costs.

30 (f) Paragraphs (b) and (c) do not apply to the
31 underwriting or issuance of a life insurance policy,

1 disability income policy, or long-term care policy or any
2 other actions of an insurer directly related to a life
3 insurance policy, disability income policy, or long-term care
4 policy.

5 (3) A person who performs genetic testing ~~DNA analysis~~
6 or receives records, results, or findings of genetic testing
7 ~~DNA analysis~~ must provide the person tested with notice that
8 the testing analysis was performed or that the information was
9 received. The notice must state that, upon the request of the
10 person tested, the information will be made available to his
11 physician. The notice must also state whether the information
12 was used in any decision to grant or deny any insurance, to
13 issue a substandard insurance policy, to grant or deny
14 employment, mortgage, loan, credit, or educational
15 opportunity. If the information was used in any decision that
16 resulted in a denial or the issuance of a substandard
17 insurance policy, the testing analysis must be repeated to
18 verify the accuracy of the first testing analysis, and if the
19 first testing analysis is found to be inaccurate, the denial
20 or the issuance of a substandard insurance policy must be
21 reviewed.

22 Section 8. This act shall take effect January 1, 1998.

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25 HOUSE SUMMARY

26 Prohibits insurers from requiring persons to take genetic
27 tests for "any insurance purpose" and from soliciting
28 information derivable from such tests from any other
29 source. Requires an insurance company that has come into
30 possession of such material to hold it confidential.
31 Provides civil and criminal penalties for violation of
confidentiality requirements of genetic testing results
and for failure to make required disclosures before
obtaining informed consent. Defines the term "genetic
testing."