

By the Committee on Health Care Services and Representatives Stafford, Diaz de la Portilla, Wasserman Schultz, Smith, Roberts-Burke, Heyman, Peaden, Cosgrove, Frankel, Futch, Brown, Maygarden, Jacobs, Spratt, (Additional Sponsors on Last Printed Page)

1 A bill to be entitled
2 An act relating to genetic testing for
3 insurance purposes; amending s. 624.155, F.S.;
4 permitting civil actions against insurers for
5 violations of s. 627.4301, F.S.; creating s.
6 627.4301, F.S.; prohibiting health insurers
7 from using genetic information or requiring
8 genetic testing; amending s. 632.638, F.S.;
9 providing applicability of s. 627.4301, F.S.,
10 to fraternal benefit societies; creating s.
11 636.0201, F.S.; providing applicability of s.
12 627.4301, F.S., to prepaid limited health
13 service organizations; amending s. 641.30,
14 F.S.; providing applicability of s. 627.4301,
15 F.S., to health maintenance organizations;
16 creating s. 641.438, F.S.; providing
17 applicability of s. 627.4301, F.S., to prepaid
18 health clinics; amending s. 760.40, F.S.;
19 defining the term "genetic testing"; providing
20 exceptions; providing standards for informed
21 consent; prohibiting release of genetic testing
22 results without written consent, under certain
23 circumstances; providing civil and criminal
24 penalties; providing an effective date.

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

27
28 Section 1. Paragraph (a) of subsection (1) of section
29 624.155, Florida Statutes, is amended to read:
30 624.155 Civil remedy.--

31

1 (1) Any person may bring a civil action against an
2 insurer when such person is damaged:
3 (a) By a violation of any of the following provisions
4 by the insurer:
5 1. Section 626.9541(1)(i), (o), or (x);
6 2. Section 626.9551;
7 3. Section 626.9705;
8 4. Section 626.9706;
9 5. Section 626.9707; ~~or~~
10 6. Section 627.4301; or
11 7.6. Section 627.7283.
12 (b) By the commission of any of the following acts by
13 the insurer:
14 1. Not attempting in good faith to settle claims when,
15 under all the circumstances, it could and should have done so,
16 had it acted fairly and honestly toward its insured and with
17 due regard for his interests;
18 2. Making claims payments to insureds or beneficiaries
19 not accompanied by a statement setting forth the coverage
20 under which payments are being made; or
21 3. Except as to liability coverages, failing to
22 promptly settle claims, when the obligation to settle a claim
23 has become reasonably clear, under one portion of the
24 insurance policy coverage in order to influence settlements
25 under other portions of the insurance policy coverage.
26
27 Notwithstanding the provisions of the above to the contrary, a
28 person pursuing a remedy under this section need not prove
29 that such act was committed or performed with such frequency
30 as to indicate a general business practice.
31

1 Section 2. Section 627.4301, Florida Statutes, is
2 created to read:
3 627.4301 Genetic information for insurance purposes.--
4 (1) DEFINITIONS.--As used in this section, the term:
5 (a) "Genetic information" means information about
6 genes, gene products, or inherited characteristics that may
7 derive from the individual or a family member. Genetic
8 information does not include information derived from routine
9 physical examination or chemical, blood, or urine analysis
10 unless conducted purposefully to identify genes, gene products
11 or inherited characteristics, or routine family history.
12 (b) "Health insurer" means an authorized insurer
13 offering health insurance as defined in s. 624.603, a
14 self-insured plan as defined in s. 624.031, a
15 multiple-employer welfare arrangement as defined in s.
16 624.437, a prepaid limited health service organization as
17 defined in s. 636.003, a health maintenance organization as
18 defined in s. 641.19, a prepaid health clinic as defined in s.
19 641.402, a fraternal benefit society as defined in s. 632.601,
20 an accountable health partnership as defined in s. 408.701, or
21 any health care arrangement whereby risk is assumed.
22 (2) USE OF GENETIC INFORMATION.--
23 (a) In the absence of a diagnosis of a condition
24 related to genetic information, no health insurer authorized
25 to transact insurance in this state may cancel, limit, or deny
26 coverage, or establish differentials in premium rates, based
27 on such information.
28 (b) Health insurers may not require or solicit genetic
29 testing as defined in s. 760.40, use or review genetic test
30 results, or consider a person's decisions or actions relating
31 to genetic testing in any manner for any insurance purpose.

1 (3) APPLICATION OF SECTION.--This section does not
2 apply to the underwriting or issuance of a life insurance
3 policy, disability income policy, long-term care policy,
4 accident-only policy, hospital indemnity or fixed indemnity
5 policy, dental policy, or vision policy or any other actions
6 of an insurer directly related to a life insurance policy,
7 disability income policy, long-term care policy, accident-only
8 policy, hospital indemnity or fixed indemnity policy, dental
9 policy, or vision policy.

10 Section 3. Section 632.638, Florida Statutes, is
11 amended to read:

12 632.638 Applicability of other code provisions.--In
13 addition to other ~~the~~ provisions ~~heretofore~~ contained or
14 referred to in this chapter, the following ~~other~~ chapters and
15 provisions of this code ~~shall~~ apply to fraternal benefit
16 societies, to the extent applicable and not in conflict with
17 the express provisions of this chapter and the reasonable
18 implications thereof, ~~as follows~~:

- 19 (1) Part I of chapter 624;
20 (2) Part II of chapter 624;
21 (3) Sections 624.404, 624.415, 624.416, 624.418,
22 624.420, 624.421, 624.4211, 624.422, and 624.423;
23 (4) Section 624.501;
24 (5) Part I of chapter 626;
25 (6) Part III of chapter 626;
26 (7) Part IV of chapter 626;
27 (8) Sections 626.901 through 626.912;
28 (9) Part VIII of chapter 626, subject to the
29 limitations set forth in former s. 632.341;
30 (10) Section 627.424;
31 (11) Section 627.428;

1 (12) Section 627.4301;
2 (13)~~(12)~~ Section 627.479; and
3 (14)~~(13)~~ Part I of chapter 631.

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

6 636.0201 Genetic information restrictions.--A prepaid
7 limited health service organization must comply with the
8 provisions of s. 627.4301.

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

11 641.30 Construction and relationship to other laws.--
12 (5) Every health maintenance organization must comply
13 with the provisions of s. 627.4301.

14 Section 6. Section 641.438, Florida Statutes, is
15 created to read:

16 641.438 Genetic information restrictions.--A prepaid
17 health clinic must comply with the provisions of s. 627.4301.

18 Section 7. Section 760.40, Florida Statutes, 1996
19 Supplement, is amended to read:

20 760.40 Genetic testing; informed consent;
21 confidentiality.--

22 (1) As used in this section, the term "genetic
23 testing" means testing to determine the presence or absence of
24 variations or mutations, including carrier status, in an
25 individual's genetic material or genes that are scientifically
26 or medically believed to cause a disease, disorder, or
27 syndrome, or are associated with a statistically increased
28 risk of developing a disease, disorder, or syndrome, which is
29 asymptomatic at the time of testing"~~DNA analysis" means the~~
30 ~~medical and biological examination and analysis of a person to~~
31 ~~identify the presence and composition of genes in that~~

1 ~~person's body.~~ The term includes DNA typing, but does not
2 include:and genetic testing.

3 (a) Routine physical examinations or chemical, blood,
4 or urine analysis unless conducted purposefully to identify
5 genetic variation;

6 (b) Testing for the purpose of diagnosing a disease,
7 disorder, or syndrome that has arisen because of a variation
8 or mutation in genes or genetic material;

9 (c) Testing conducted for the purposes of criminal
10 prosecution;

11 (d) Testing to determine paternity as provided in s.
12 742.12(1);

13 (e) Testing for the purposes of acquiring specimens
14 for persons convicted of certain offenses as provided in s.
15 943.325;

16 (f) Testing of infants performed pursuant to s.
17 383.14;

18 (g) Testing to determine the identity of a deceased
19 person; or

20 (h) Testing conducted on anonymous samples of human
21 genetic material or genes for research or statistical
22 purposes, or pursuant to a research protocol approved by an
23 Institutional Review Board which ensures the anonymity of the
24 sources of the samples.

25 ~~(2)(a) Genetic testing~~ ~~Except for purposes of criminal~~
26 ~~prosecution, except for purposes of determining paternity as~~
27 ~~provided in s. 742.12(1), and except for purposes of acquiring~~
28 ~~specimens from persons convicted of certain offenses as~~
29 ~~provided in s. 943.325, DNA analysis~~ may be performed only
30 with the informed consent of the person to be tested, and such
31 person shall have the exclusive right to specify whether and

1 under what conditions the results of such genetic testing may
2 be retained by or disclosed to any person.The results of such
3 genetic testing ~~DNA analysis~~, whether held by a public or
4 private entity, ~~are the exclusive property of the person~~
5 ~~tested~~, are confidential, and may not be disclosed without the
6 written consent of the person tested. Such information held by
7 a public entity is exempt from the provisions of s. 119.07(1)
8 and s. 24(a), Art. I of the State Constitution.

9 (b) Informed consent to genetic testing must be given
10 in writing, and, before consent is given, the person being
11 tested must be informed:

12 1. Of the purpose, potential uses, and limitations of
13 the test results;

14 2. That the test results could preclude or result in
15 the issuance of a substandard life, disability income,
16 long-term care, accident-only, hospital indemnity or fixed
17 indemnity, dental or vision policy, or be used to grant or
18 deny an employment, mortgage, loan, credit, or educational
19 opportunity;

20 3. That the test results may not be disclosed without
21 the consent of the person tested; and

22 4. That state law provides civil and criminal
23 penalties for the unauthorized disclosure of the results of
24 genetic testing.

25 (c) The results of genetic testing may not be released
26 pursuant to a consensual or nonconsensual general release of
27 patient records. Any disclosure of the results of genetic
28 testing that identifies the person tested with the test
29 results requires a separate written consent to release and
30 must satisfy the following requirements:

31 1. Be written in plain language on a separate form;

- 1 2. Be dated and signed by the person tested or person
2 authorized to act on behalf of the person tested;
3 3. Specify the person or entity authorized to disclose
4 the test results;
5 4. Specify the person or entity authorized to receive
6 the test results and the purposes for which the test results
7 are to be used;
8 5. Specify the length of time the release shall remain
9 valid; and
10 6. Advise the person signing the release of the right
11 to receive a copy of the release.

12
13 Access to genetic test results that identify subjects
14 participating in clinical investigations regulated by the
15 United States Food and Drug Administration, which is permitted
16 under 21 C.F.R. part 812 or part 312, shall not be considered
17 an unauthorized release or disclosure under this paragraph.

18 (d) Any insurer authorized to transact business in
19 this state who possesses information derived from genetic
20 testing, which identifies or provides identifying
21 characteristics of the person to whom the test results apply,
22 may not further release the information to any third party,
23 including insurance industry data banks, without the explicit
24 written consent of the individual tested.

25 (e)~~(b)~~ A person who violates paragraph (a), paragraph
26 (b), paragraph (c), or paragraph (d) is guilty of a
27 misdemeanor of the first degree, punishable as provided in s.
28 775.082 or s. 775.083. Each disclosure made in violation of
29 this section is a separate and actionable offense.

30 (f) In addition to the criminal penalty provided in
31 paragraph (e), any person who violates the confidentiality

1 provisions of this section shall be civilly liable to the
2 person whose genetic testing results were unlawfully disclosed
3 for actual damages and an additional civil penalty of \$2,500
4 for a negligently caused disclosure and \$10,000 for a
5 willfully caused disclosure.

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

28 Section 8. This act shall take effect January 1, 1998.
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ADDITIONAL SPONSORS

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.