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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2019	.	
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The Committee on Health Policy (Bean) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 627.4301, Florida Statutes, is amended  
to read:

627.4301 Genetic information for insurance purposes.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Genetic information" means information derived from  
genetic testing to determine the presence or absence of  
variations or mutations, including carrier status, in an



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12 individual's genetic material or genes that are scientifically  
13 or medically believed to cause a disease, disorder, or syndrome,  
14 or are associated with a statistically increased risk of  
15 developing a disease, disorder, or syndrome, which is  
16 asymptomatic at the time of testing. Such testing does not  
17 include routine physical examinations or chemical, blood, or  
18 urine analysis, unless conducted purposefully to obtain genetic  
19 information, or questions regarding family history.

20 (b) "Genetic test results" includes, but is not limited to,  
21 results of direct-to-consumer commercial genetic testing.

22 (c) "Health insurer" means an authorized insurer offering  
23 health insurance as defined in s. 624.603, a self-insured plan  
24 as defined in s. 624.031, a multiple-employer welfare  
25 arrangement as defined in s. 624.437, a prepaid limited health  
26 service organization as defined in s. 636.003, a health  
27 maintenance organization as defined in s. 641.19, a prepaid  
28 health clinic as defined in s. 641.402, a fraternal benefit  
29 society as defined in s. 632.601, or any health care arrangement  
30 whereby risk is assumed.

31 (d) "Life insurer" has the same meaning as provided in s.  
32 624.602 and includes an insurer issuing life insurance contracts  
33 that grant additional benefits in the event of an insured's  
34 disability.

35 (e) "Long-term care insurer" means an insurer that issues  
36 long-term care insurance policies as described in s. 627.9404.

37 (2) RESTRICTIONS ON THE USE OF GENETIC INFORMATION BY  
38 HEALTH INSURERS.—

39 (a) In the absence of a diagnosis of a condition related to  
40 genetic information, no health insurer authorized to transact



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41 insurance in this state may cancel, limit, or deny coverage, or  
42 establish differentials in premium rates, based on such  
43 information.

44 (b) Health insurers may not require or solicit genetic  
45 information, use genetic test results, or consider a person's  
46 decisions or actions relating to genetic testing in any manner  
47 for any insurance purpose.

48 (c) This subsection ~~section~~ does not apply to the  
49 underwriting or issuance of a life insurance policy, disability  
50 income policy, long-term care policy, accident-only policy,  
51 hospital indemnity or fixed indemnity policy, dental policy, or  
52 vision policy or any other actions of an insurer directly  
53 related to a life insurance policy, disability income policy,  
54 long-term care policy, accident-only policy, hospital indemnity  
55 or fixed indemnity policy, dental policy, or vision policy.

56 (3) RESTRICTIONS ON THE USE OF GENETIC INFORMATION BY LIFE  
57 INSURERS, LONG-TERM CARE INSURERS, AND DISABILITY INCOME  
58 INSURERS.—

59 (a) A life insurer, long-term care insurer, or disability  
60 income insurer may not:

61 1. Require an applicant to take a genetic test;

62 2. Collect an applicant's genetic information or genetic  
63 test results without the applicant's authorization; or

64 3. Consider the results of a genetic test that is designed  
65 to share information with an individual concerning the  
66 applicant's race, ethnicity, or national origin and that is not  
67 related to an applicant's medical condition or future health  
68 risk.

69 (b) A life insurer, long-term care insurer, or disability



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70 income insurer may only consider genetic test results included  
71 in an individual's medical record if the tests have been  
72 reviewed and confirmed by the individual's physician and the  
73 insurer complies with paragraph (c).

74 (c) A life insurer, long-term care insurer, or disability  
75 income insurer may not cancel, limit, or deny coverage, or  
76 establish differentials in premium rates, based on genetic  
77 information unless such action is based on objective statistical  
78 evidence related to actual or anticipated loss experience that  
79 is relevant to an individual's life expectancy or health. A life  
80 insurer, long-term care insurer, or disability income insurer  
81 shall document the rationale for such action and provide the  
82 documentation to the office upon request.

83 (d) Genetic information, including genetic test results, is  
84 nonpublic, private health information and is subject to the  
85 privacy protections under ss. 626.9651 and 760.40.

86 (e) This subsection does not relieve the obligation of a  
87 life insurer, long-term care insurer, or disability income  
88 insurer to comply with ss. 626.9706 and 626.9707.

89 (f) This subsection does not apply to health insurers.

90 (g) This subsection applies to policies entered into or  
91 renewed on or after January 1, 2020.

92 Section 2. Section 760.40, Florida Statutes, is amended to  
93 read:

94 760.40 Genetic testing; informed consent; confidentiality;  
95 penalties; notice of use of results.—

96 (1) As used in this section, the term "DNA analysis" means  
97 the medical and biological examination and analysis of a person  
98 to identify the presence and composition of genes in that



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99 person's body. The term includes DNA typing and genetic testing,  
100 which includes direct-to-consumer commercial genetic testing.

101 (2) (a) Except for purposes of criminal prosecution, except  
102 for purposes of determining paternity as provided in s. 409.256  
103 or s. 742.12(1), and except for purposes of acquiring specimens  
104 as provided in s. 943.325, DNA analysis may be performed only  
105 with the informed consent of the person to be tested, and the  
106 results of such DNA analysis, whether held by a public or  
107 private entity, are the exclusive property of the person tested,  
108 are confidential, and may not be disclosed without the consent  
109 of the person tested. Such information held by a public entity  
110 is exempt from the provisions of s. 119.07(1) and s. 24(a), Art.  
111 I of the State Constitution.

112 (b) A person who violates paragraph (a) is guilty of a  
113 misdemeanor of the first degree, punishable as provided in s.  
114 775.082 or s. 775.083.

115 (3) A person, including an entity providing direct-to-  
116 consumer commercial genetic testing, who performs DNA analysis  
117 or receives records, results, or findings of DNA analysis must  
118 provide the person tested with notice that the analysis was  
119 performed or that the information was received. The notice must  
120 state that, upon the request of the person tested, the  
121 information will be made available to his or her physician. The  
122 notice must also state whether the information was used in any  
123 decision to grant or deny any insurance, employment, mortgage,  
124 loan, credit, or educational opportunity. If the information was  
125 used in any decision that resulted in a denial, the analysis  
126 must be repeated to verify the accuracy of the first analysis,  
127 and if the first analysis is found to be inaccurate, the denial



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128 must be reviewed.

129 (4) A person, including a company providing direct-to-  
130 consumer commercial genetic testing, may not sell, release, or  
131 share any personal identifying health information about a  
132 consumer with a life or health insurance company without a prior  
133 written authorization and a written request from the consumer  
134 for release of the information.

135 Section 3. This act shall take effect July 1, 2019.

136  
137 ===== T I T L E A M E N D M E N T =====

138 And the title is amended as follows:

139 Delete everything before the enacting clause  
140 and insert:

141 A bill to be entitled  
142 An act relating to the use of genetic information;  
143 amending s. 627.4301, F.S.; defining the terms  
144 "genetic test results," "life insurer," and "long-term  
145 care insurer"; prohibiting life insurers, long-term  
146 care insurers, and disability income insurers from  
147 certain actions relating to genetic information or  
148 genetic testing of applicants; providing that such  
149 insurers may consider an individual's genetic test  
150 results only under certain circumstances; prohibiting  
151 such insurers from taking certain actions relating to  
152 coverage or rates unless certain conditions are met;  
153 providing that genetic information is nonpublic,  
154 private health information and is subject to certain  
155 privacy protections; providing construction and  
156 applicability; amending s. 760.40, F.S.; revising the



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157 definition of the term "DNA analysis"; specifying that  
158 certain requirements relating to DNA analysis apply to  
159 entities providing direct-to-consumer commercial  
160 genetic testing; prohibiting certain actions by such  
161 entities without a prior written authorization and  
162 request from the consumer for release of certain  
163 information; providing an effective date.