

By the Committee on Health Policy; and Senators Bean and Benacquisto

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2019258c1

1 A bill to be entitled
2 An act relating to the use of genetic information;
3 amending s. 627.4301, F.S.; defining the terms
4 "genetic test results," "life insurer," and "long-term
5 care insurer"; prohibiting life insurers, long-term
6 care insurers, and disability income insurers from
7 certain actions relating to genetic information or
8 genetic testing of applicants; providing that such
9 insurers may consider an individual's genetic test
10 results only under certain circumstances; prohibiting
11 such insurers from taking certain actions relating to
12 coverage or rates unless certain conditions are met;
13 providing that genetic information is nonpublic,
14 private health information and is subject to certain
15 privacy protections; providing construction and
16 applicability; amending s. 760.40, F.S.; revising the
17 definition of the term "DNA analysis"; specifying that
18 certain requirements relating to DNA analysis apply to
19 entities providing direct-to-consumer commercial
20 genetic testing; prohibiting certain actions by such
21 entities without a prior written authorization and
22 request from the consumer for release of certain
23 information; providing an effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

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

29 627.4301 Genetic information for insurance purposes.-

588-04024-19

2019258c1

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

31 (a) "Genetic information" means information derived from
32 genetic testing to determine the presence or absence of
33 variations or mutations, including carrier status, in an
34 individual's genetic material or genes that are scientifically
35 or medically believed to cause a disease, disorder, or syndrome,
36 or are associated with a statistically increased risk of
37 developing a disease, disorder, or syndrome, which is
38 asymptomatic at the time of testing. Such testing does not
39 include routine physical examinations or chemical, blood, or
40 urine analysis, unless conducted purposefully to obtain genetic
41 information, or questions regarding family history.

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

44 (c) "Health insurer" means an authorized insurer offering
45 health insurance as defined in s. 624.603, a self-insured plan
46 as defined in s. 624.031, a multiple-employer welfare
47 arrangement as defined in s. 624.437, a prepaid limited health
48 service organization as defined in s. 636.003, a health
49 maintenance organization as defined in s. 641.19, a prepaid
50 health clinic as defined in s. 641.402, a fraternal benefit
51 society as defined in s. 632.601, or any health care arrangement
52 whereby risk is assumed.

53 (d) "Life insurer" has the same meaning as provided in s.
54 624.602 and includes an insurer issuing life insurance contracts
55 that grant additional benefits in the event of an insured's
56 disability.

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

588-04024-19

2019258c1

59 (2) RESTRICTIONS ON THE USE OF GENETIC INFORMATION BY
 60 HEALTH INSURERS.—

61 (a) In the absence of a diagnosis of a condition related to
 62 genetic information, no health insurer authorized to transact
 63 insurance in this state may cancel, limit, or deny coverage, or
 64 establish differentials in premium rates, based on such
 65 information.

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

70 (c) This subsection ~~section~~ does not apply to the
 71 underwriting or issuance of a life insurance policy, disability
 72 income policy, long-term care policy, accident-only policy,
 73 hospital indemnity or fixed indemnity policy, dental policy, or
 74 vision policy or any other actions of an insurer directly
 75 related to a life insurance policy, disability income policy,
 76 long-term care policy, accident-only policy, hospital indemnity
 77 or fixed indemnity policy, dental policy, or vision policy.

78 (3) RESTRICTIONS ON THE USE OF GENETIC INFORMATION BY LIFE
 79 INSURERS, LONG-TERM CARE INSURERS, AND DISABILITY INCOME
 80 INSURERS.—

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

- 83 1. Require an applicant to take a genetic test;
- 84 2. Collect an applicant's genetic information or genetic
 85 test results without the applicant's authorization; or
- 86 3. Consider the results of a genetic test that is designed
 87 to share information with an individual concerning the

588-04024-19

2019258c1

88 applicant's race, ethnicity, or national origin and that is not
89 related to an applicant's medical condition or future health
90 risk.

91 (b) A life insurer, long-term care insurer, or disability
92 income insurer may only consider genetic test results included
93 in an individual's medical record if the tests have been
94 reviewed and confirmed by the individual's physician and the
95 insurer complies with paragraph (c).

96 (c) A life insurer, long-term care insurer, or disability
97 income insurer may not cancel, limit, or deny coverage, or
98 establish differentials in premium rates, based on genetic
99 information unless such action is based on objective statistical
100 evidence related to actual or anticipated loss experience that
101 is relevant to an individual's life expectancy or health. A life
102 insurer, long-term care insurer, or disability income insurer
103 shall document the rationale for such action and provide the
104 documentation to the office upon request.

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

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

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

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

114 Section 2. Section 760.40, Florida Statutes, is amended to
115 read:

116 760.40 Genetic testing; informed consent; confidentiality;

588-04024-19

2019258c1

117 penalties; notice of use of results.-

118 (1) As used in this section, the term "DNA analysis" means
119 the medical and biological examination and analysis of a person
120 to identify the presence and composition of genes in that
121 person's body. The term includes DNA typing and genetic testing,
122 which includes direct-to-consumer commercial genetic testing.

123 (2) (a) Except for purposes of criminal prosecution, except
124 for purposes of determining paternity as provided in s. 409.256
125 or s. 742.12(1), and except for purposes of acquiring specimens
126 as provided in s. 943.325, DNA analysis may be performed only
127 with the informed consent of the person to be tested, and the
128 results of such DNA analysis, whether held by a public or
129 private entity, are the exclusive property of the person tested,
130 are confidential, and may not be disclosed without the consent
131 of the person tested. Such information held by a public entity
132 is exempt from the provisions of s. 119.07(1) and s. 24(a), Art.
133 I of the State Constitution.

134 (b) A person who violates paragraph (a) is guilty of a
135 misdemeanor of the first degree, punishable as provided in s.
136 775.082 or s. 775.083.

137 (3) A person, including an entity providing direct-to-
138 consumer commercial genetic testing, who performs DNA analysis
139 or receives records, results, or findings of DNA analysis must
140 provide the person tested with notice that the analysis was
141 performed or that the information was received. The notice must
142 state that, upon the request of the person tested, the
143 information will be made available to his or her physician. The
144 notice must also state whether the information was used in any
145 decision to grant or deny any insurance, employment, mortgage,

588-04024-19

2019258c1

146 loan, credit, or educational opportunity. If the information was
147 used in any decision that resulted in a denial, the analysis
148 must be repeated to verify the accuracy of the first analysis,
149 and if the first analysis is found to be inaccurate, the denial
150 must be reviewed.

151 (4) A person, including a company providing direct-to-
152 consumer commercial genetic testing, may not sell, release, or
153 share any personal identifying health information about a
154 consumer with a life or health insurance company without a prior
155 written authorization and a written request from the consumer
156 for release of the information.

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