

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

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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.-

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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.

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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

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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;

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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,

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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.