

HOUSE BILL 369

**52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

INTRODUCED BY

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AN ACT

RELATING TO HEALTH CARE; EXCEPTING A CLINICAL LABORATORY  
PERFORMING SERVICES PURSUANT TO A WRITTEN ORDER FROM A HEALTH  
CARE PRACTITIONER FROM THE REQUIREMENT TO OBTAIN INFORMED  
CONSENT FOR GENETIC ANALYSIS OR TESTING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1.** Section 24-21-1 NMSA 1978 (being Laws 1998,  
Chapter 77, Section 1) is amended to read:

"24-21-1. SHORT TITLE.--~~[This act]~~ Chapter 24, Article 21  
NMSA 1978 may be cited as the "Genetic Information Privacy  
Act"."

**SECTION 2.** Section 24-21-2 NMSA 1978 (being Laws 1998,  
Chapter 77, Section 2, as amended) is amended to read:

"24-21-2. DEFINITIONS.--As used in the Genetic  
Information Privacy Act:

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1           A. "DNA" means deoxyribonucleic acid, including  
2 mitochondrial DNA, complementary DNA and DNA derived from  
3 ribonucleic acid;

4           B. "gene products" means gene fragments,  
5 ribonucleic acids or proteins derived from DNA that would be a  
6 reflection of or indicate DNA sequence information;

7           C. "genetic analysis" means a test of [~~a person's~~  
8 an individual's DNA, gene products or chromosomes that  
9 indicates a propensity for or susceptibility to illness,  
10 disease, impairment or other disorders, whether physical or  
11 mental; that demonstrates genetic or chromosomal damage due to  
12 environmental factors; or that indicates carrier status for  
13 disease or disorder; excluded, however, are routine physical  
14 measurements, chemical, blood and urine analysis, tests for  
15 drugs, tests for the presence of HIV virus and any other tests  
16 or analyses commonly accepted in clinical practice at the time  
17 ordered;

18           D. "genetic information" means information about  
19 the genetic makeup of [~~a person~~] an individual or members of [~~a~~  
20 ~~person's~~] an individual's family, including information  
21 resulting from genetic testing, genetic analysis, DNA  
22 composition, participation in genetic research or use of  
23 genetic services;

24           E. "genetic propensity" means the presence in [~~a~~  
25 ~~person~~] an individual or members of [~~a person's~~] an

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1 individual's family of real or perceived variations in DNA or  
2 other genetic material from that of the normal genome that do  
3 not represent the outward physical or medical signs of a  
4 genetic disease at the time of consideration;

5 F. "genetic testing" means a test of an  
6 individual's DNA, ribonucleic acid, chromosomes or proteins,  
7 including carrier status, that are linked with physical or  
8 mental disorders, impairments or genetic characteristics or  
9 that indicate that an individual may be predisposed to an  
10 illness, disease, impairment or other disorder; ~~and~~

11 G. "insurer" means an insurance company, insurance  
12 service or insurance organization that is licensed to engage in  
13 the business of insurance in the state and that is subject to  
14 state law that regulates insurance within the meaning of  
15 Paragraph (2) of Subsection (b) of Section 514 of the federal  
16 Employee Retirement Income Security Act of 1974, as amended.

17 "Insurer" does not include an insurance company that is  
18 licensed under the Prepaid Dental Plan Law or a company that is  
19 solely engaged in the sale of dental insurance and is not  
20 licensed under the Prepaid Dental Plan Law, but under another  
21 provision of the New Mexico Insurance Code; and

22 H. "laboratory" means a facility accredited  
23 pursuant to the federal clinical laboratory improvement  
24 amendments for the biological, microbiological, serological,  
25 chemical, immunohematological, hematological, biophysical,

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1 cytological, pathological or other examination of materials  
2 derived from the human body for the purpose of providing  
3 information for the diagnosis, prevention or treatment of any  
4 disease or impairment of, or the assessment of the health of,  
5 human beings and includes procedures to determine, measure or  
6 otherwise describe the presence or absence of various  
7 substances or organisms in the body."

8 SECTION 3. Section 24-21-3 NMSA 1978 (being Laws 1998,  
9 Chapter 77, Section 3) is amended to read:

10 "24-21-3. GENETIC ANALYSIS PROHIBITED WITHOUT INFORMED  
11 CONSENT--EXCEPTIONS.--

12 A. Except as provided in Subsection C of this  
13 section, no person shall obtain genetic information or samples  
14 for genetic analysis from [~~a person~~] an individual without  
15 first obtaining informed and written consent from the [~~person~~  
16 ~~or the person's~~] individual or the individual's authorized  
17 representative.

18 B. Except as provided in Subsection C of this  
19 section, genetic analysis of [~~a person~~] an individual or  
20 collection, retention, transmission or use of genetic  
21 information without the informed and written consent of the  
22 [~~person or the person's~~] individual or the individual's  
23 authorized representative is prohibited.

24 C. [~~A person's~~] An individual's DNA, genetic  
25 information or the results of genetic analysis may be obtained,

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1 retained, transmitted or used without the ~~[person's]~~  
2 individual's written and informed consent pursuant to federal  
3 or state law or regulations only:

4 (1) to identify ~~[a person]~~ an individual in  
5 the course of a criminal investigation by a law enforcement  
6 agency;

7 (2) if the ~~[person]~~ individual has been  
8 convicted of a felony, for purposes of maintaining a DNA  
9 database for law enforcement purposes;

10 (3) to identify a deceased ~~[persons]~~  
11 individual;

12 (4) to establish parental identity;

13 (5) to screen newborns;

14 (6) if the DNA, genetic information or results  
15 of genetic analysis are not identified with the ~~[person or~~  
16 ~~person's]~~ individual or the individual's family members;

17 (7) by a court for determination of damage  
18 awards pursuant to the Genetic Information Privacy Act;

19 (8) by medical repositories or registries;

20 (9) for the purpose of medical or scientific  
21 research and education, including retention of gene products,  
22 genetic information or genetic analysis if the identity of the  
23 ~~[person or person's]~~ individual or the individual's family  
24 members is not disclosed; ~~[or]~~

25 (10) for the purpose of emergency medical

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1 treatment consistent with applicable law; or

2 (11) by a laboratory conducting an analysis or  
3 test of a specified individual pursuant to a written order to  
4 the laboratory from a health care practitioner or the health  
5 care practitioner's agent, including by electronic  
6 transmission.

7 D. Actions of an insurer and third parties dealing  
8 with an insurer in the ordinary course of conducting and  
9 administering the business of life, disability income or long-  
10 term care insurance are exempt from the provisions of this  
11 section if the use of genetic analysis or genetic information  
12 for underwriting purposes is based on sound actuarial  
13 principles or related to actual or reasonably anticipated  
14 experience. However, before or at the time of collecting  
15 genetic information for use in conducting and administering the  
16 business of life, disability income or long-term care  
17 insurance, the insurer shall notify in writing an applicant for  
18 insurance or the insured that the information may be used,  
19 transmitted or retained solely for the purpose of conducting  
20 and administering the business of life, disability income or  
21 long-term care insurance.

22 E. Nothing in Paragraph (5), [~~(6)~~], (8), (9), [~~or~~]  
23 (10) or (11) of Subsection C of this section [~~3 of the Genetic~~  
24 ~~Information Privacy Act]~~ authorizes [~~obtaining, retaining,~~  
25 ~~transmitting or using a person's]~~ a person to obtain, retain,

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1 transmit or use an individual's DNA, genetic information or the  
2 results of genetic analysis if the [~~person, his~~] individual or  
3 the individual's authorized representative or guardian, or the  
4 parent or guardian of a minor child, [~~objects~~] gives notice to  
5 the person of an objection on the basis of religious tenets or  
6 practices."

7 SECTION 4. Section 24-21-4 NMSA 1978 (being Laws 1998,  
8 Chapter 77, Section 4, as amended) is amended to read:

9 "24-21-4. GENETIC DISCRIMINATION PROHIBITED.--

10 A. Discrimination by an insurer against [~~a person~~]  
11 an individual or member of the [~~person's~~] individual's family  
12 on the basis of genetic analysis, genetic information or  
13 genetic propensity is prohibited.

14 B. The provisions of this section do not require a  
15 health insurer to provide particular benefits other than those  
16 provided under the terms of the plan or coverage. A health  
17 insurer shall not consider a genetic propensity, susceptibility  
18 or carrier status as a pre-existing condition for the purpose  
19 of limiting or excluding benefits, establishing rates or  
20 providing coverage.

21 C. The provisions of this section do not prohibit  
22 use of genetic analysis, genetic propensity or genetic  
23 information by an insurer in the ordinary conduct of business  
24 in connection with life, disability income or long-term care  
25 insurance if use of genetic analysis, genetic propensity or

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1 genetic information in underwriting is based on sound actuarial  
2 principles or related to actual or reasonably anticipated  
3 experience.

4 D. It is unlawful for a person to use genetic  
5 information in employment, recruiting, housing or lending  
6 decisions or in extending public accommodations and services."

7 SECTION 5. Section 24-21-5 NMSA 1978 (being Laws 1998,  
8 Chapter 77, Section 5) is amended to read:

9 "24-21-5. RIGHTS OF RETENTION.--

10 A. Unless otherwise authorized by Subsection C of  
11 Section [~~3 of the Genetic Information Privacy Act~~] 24-21-3 NMSA  
12 1978, no person shall retain [~~a person's~~] an individual's  
13 genetic information, gene products or samples for genetic  
14 analysis without first obtaining informed and written consent  
15 from [~~the person or the person's~~] the individual or the  
16 individual's authorized representative. This subsection does  
17 not affect the status of original medical records of patients,  
18 and the rules of confidentiality and accessibility applicable  
19 to the records continue in force.

20 B. [~~A person's~~] An individual's genetic information  
21 or samples for genetic analysis shall be destroyed promptly  
22 upon the specific request by that [~~person or that person's~~]  
23 individual or that individual's authorized representative  
24 unless:

25 (1) retention is necessary for the purposes of

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1 a criminal or death investigation or a criminal or juvenile  
2 proceeding;

3 (2) retention is authorized by order of a  
4 court of competent jurisdiction;

5 (3) retention is authorized under a research  
6 protocol approved by an institution review board pursuant to  
7 federal law or a medical registry or repository authorized by  
8 state or federal law; or

9 (4) the genetic information or samples for  
10 genetic analysis have been obtained pursuant to Subsection C of  
11 Section [~~3 of the Genetic Information Privacy Act~~] 24-21-3 NMSA  
12 1978.

13 C. Actions of an insurer and third parties dealing  
14 with an insurer in the ordinary course of conducting and  
15 administering the business of life, disability income or long-  
16 term care insurance are exempt from the provisions of this  
17 section. However, before or at the time of collecting genetic  
18 information for use in conducting and administering the  
19 business of life, disability income or long-term care  
20 insurance, the insurer shall notify in writing an applicant for  
21 insurance or the insured that the information may be used,  
22 transmitted or retained solely for the purpose of conducting  
23 and administering the business of life, disability income or  
24 long-term care insurance.

25 D. Nothing in Paragraph (3) or (4) of Subsection B

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1 of this section [~~5 of the Genetic Information Privacy Act~~]  
2 authorizes retention of [~~a person's~~] an individual's genetic  
3 information or samples for genetic analysis if the [~~person,~~  
4 ~~his~~] individual or the individual's authorized representative  
5 or guardian, or the parent or guardian of a minor child,  
6 objects on the basis of religious tenets or practices."

7 SECTION 6. Section 24-21-6 NMSA 1978 (being Laws 1998,  
8 Chapter 77, Section 6) is amended to read:

9 "24-21-6. PENALTIES.--

10 A. The attorney general or a district attorney may  
11 bring a civil action against a person for violating the  
12 provisions of the Genetic Information Privacy Act or to  
13 otherwise enforce those provisions.

14 B. [~~A person~~] An individual whose rights under the  
15 provisions of the Genetic Information Privacy Act have been  
16 violated may bring a civil action for damages or other relief.

17 C. The court may order a person who violates the  
18 provisions of the Genetic Information Privacy Act to comply  
19 with those provisions and may order other appropriate relief,  
20 including:

21 (1) directing an insurer who has violated  
22 Section [~~3 or 4 of the Genetic Information Privacy Act~~] 24-21-3  
23 or 24-21-4 NMSA 1978 to provide a policy for hospital and  
24 medical expenses, including health insurance, group disability  
25 insurance or long-term care coverage, to the injured [~~person~~]

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1 individual under the same terms and conditions as would have  
2 applied had the violation not occurred;

3 (2) actual damages;

4 (3) damages of up to five thousand dollars  
5 (\$5,000) in addition to any economic loss if the violation  
6 results from willful or grossly negligent conduct; and

7 (4) reasonable attorney fees and appropriate  
8 court costs.

9 D. Pursuant to Subsection C of Section [~~3 of the~~  
10 ~~Genetic Information Privacy Act~~] 24-21-3 NMSA 1978, the court  
11 may use genetic information to determine the cause of damage or  
12 injury and penalty awards.

13 E. Each instance of wrongful collection, analysis,  
14 retention, disclosure or use of genetic information constitutes  
15 a separate and actionable violation of the Genetic Information  
16 Privacy Act."