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HOUSE BILL 395

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

DANICE PICRAUX

AN ACT

RELATING TO HEALTH; ENACTING NEW SECTIONS OF THE NMSA 1978 TO
PROTECT CITIZENS' PRIVACY; PROVIDING FOR LIMITATIONS ON GENETIC
ANALYSIS AND THE COLLECTION, RETENTION, DISCLOSURE AND USE OF
GENETIC INFORMATION; PROHIBITING DISCRIMINATION BY INSURERS
BASED ON GENETIC INFORMATION; PROVIDING PENALTIES.

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

Section 1. SHORT TITLE.--This act may be cited as the
"Genetic Information Privacy Act".

Section 2. DEFINITIONS.--As used in the Genetic
Information Privacy Act:

A. "DNA" means deoxyribonucleic acid, including
mitochondrial DNA, complementary DNA and any DNA derived from
ribonucleic acid (RNA);

B. "genetic analysis" means a test of the

1 individual's DNA, gene products or chromosomes that indicates a
2 propensity for or susceptibility to illness, disease, impairment
3 or other disorders, whether physical or mental, or that
4 demonstrates genetic or chromosomal damage due to environmental
5 factors, or carrier status for disease or disorder;

6 C. "genetic information" means information about the
7 genetic makeup of an individual or members of an individual's
8 family resulting from genetic analysis, DNA composition,
9 participation in genetic research or use of genetic services;

10 D. "genetic propensity" means the presence in an
11 individual or members of an individual's family of real or
12 perceived variations in DNA or other genetic material from that
13 of the normal genome that do not represent the outward physical,
14 medical signs of a genetic disease at the time of consideration;

15 E. "insurer" means a person who provides health
16 insurance or life insurance; and

17 F. "person" means an individual or any other legal
18 entity.

19 Section 3. DNA OWNERSHIP-- RIGHTS OF OWNERSHIP-- GENETIC
20 ANALYSIS PROHIBITED WITHOUT PERMISSION OF OWNER. --

21 A. An individual's DNA, results derived from genetic
22 analysis and genetic information are the property of the
23 individual.

24 B. Except as provided in Subsection C of this
25 section, genetic analysis of an individual and collection,

Underscored material = new
[bracketed material] = delete

1 retention, transmission or use of genetic information without
2 the written informed consent of the individual or the
3 individual's authorized representative is prohibited.

4 C. Genetic information and the results of genetic
5 analysis may be obtained without the individual's written and
6 informed consent only as authorized by law or rules of the
7 department of public health:

8 (1) to identify an individual in the course of
9 a criminal investigation by a law enforcement agency;

10 (2) to identify deceased individuals;

11 (3) to establish parental identity;

12 (4) to screen newborns;

13 (5) if the DNA, genetic analysis, results or
14 genetic information is not identified with the individual or
15 individual's family member; or

16 (6) by a court for determination of damage
17 awards pursuant to this subsection.

18 Section 4. GENETIC DISCRIMINATION PROHIBITED. --

19 Discrimination by an insurer against an individual or member of
20 the individual's family on the basis of genetic analysis for
21 genetic propensity, susceptibility or carrier status for a
22 disease or disorder or genetic information regarding the
23 participation in genetic research or use of genetic services is
24 prohibited.

25 Section 5. PENALTIES. --

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Underscored material = new
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1 A. The attorney general or district attorney may
2 bring a civil action against a person for violating the
3 provisions of the Genetic Information Privacy Act or to
4 otherwise enforce those provisions.

5 B. An individual whose rights pursuant to the
6 provisions of the Genetic Information Privacy Act have been
7 violated may bring a civil action for damages or other relief.

8 C. The court may order a person who violates the
9 provisions of the Genetic Information Privacy Act to comply with
10 those provisions and may order other appropriate relief,
11 including:

12 (1) directing the person to provide a policy
13 for hospital and medical expenses, including health insurance,
14 group disability insurance or long-term-care coverage, to the
15 injured individual under the same terms and conditions as would
16 have applied had the violation not occurred;

17 (2) damages for economic, bodily or emotional
18 harm;

19 (3) damages for economic losses sustained as a
20 result of negligent violation of that act;

21 (4) damages of up to five thousand dollars
22 (\$5,000) in addition to any economic loss if the violation
23 results from willful or grossly negligent conduct; or

24 (5) treble damages if the violation resulted in
25 profit or monetary gain to the insurer or other person; and

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(6) if the plaintiff prevails, recovery of reasonable attorney fees and all appropriate court costs from the defendant.

D. Pursuant to Subsection C of Section 3 of the Genetic Information Privacy Act the court may use genetic information to determine the cause of damage or injury and penalty awards.

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

State of New Mexico
House of Representatives

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

February 19, 1997

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 395

has had it under consideration and reports same WITHOUT
RECOMMENDATION, amended as follows:

1. On page 2, line 21, strike "An", and insert in lieu thereof "Except as provided in Subsection D of this section, an".
2. On page 3, line 7, strike "public".
3. On page 3, line 15, strike "or".
4. On page 3, line 17, strike the period and insert in lieu

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

HJC/HB 395

Page 7

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thereof a semi colon.

5. On page 3, between lines 17 and 18, insert the following subparagraphs and subsection:

"(7) by medical repositories or registries, as authorized by federal or state laws or regulations; or

(8) for purposes of medical or scientific research and education, including retention of genetic analysis, information, results and tissues, where the identity of individuals or individuals' family members will not be disclosed.

D. An individual's DNA, results derived from genetic analysis and genetic information obtained or retained by an authorized medical repository or registry, or other institution authorized by rules of the department of health, will be the property of the authorized repository, registry or institution."

6. On page 3, between lines 9 and 10 insert the following:

"(2) if the individual has been convicted of a felony and is in the custody of the New Mexico Department of Corrections, for purposes of maintaining a DNA data base for law enforcement purposes;".

7. Renumber the succeeding paragraphs accordingly.

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

HJC/HB 395

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Respectfully submitted,

Thomas P. Foy, Chairman

Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 8 For 0 Against

Yes: 8

Excused: Alwin, Luna, Rios, Sanchez, Pederson

Absent: None

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Underscored material = new
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State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 4, 1997

Mr. Speaker:

Your BUSINESS AND INDUSTRY COMMITTEE, to whom has
been referred

HOUSE BILL 395, as amended

has had it under consideration and reports same with
recommendation that it DO NOT PASS, but that

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE
FOR
HOUSE BILL 395

DO PASS, amended as follows:

1. On page 3, line 10, delete "authorized".
2. On page 6, line 21, delete "person" and insert
"insurer".

Respectfully submitted,

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Fred Luna, Chairman

Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 7 For 0 Against

Yes: 7

Excused: Alwin, Hobbs, Lutz, J.G. Taylor, Varela

Absent: Getty

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HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 395

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

AN ACT

RELATING TO HEALTH; ENACTING NEW SECTIONS OF THE NMSA 1978 TO
PROTECT CITIZENS' PRIVACY; PROVIDING FOR LIMITATIONS ON GENETIC
ANALYSIS AND THE COLLECTION, RETENTION, DISCLOSURE AND USE OF
GENETIC INFORMATION; PROHIBITING DISCRIMINATION BY INSURERS
BASED ON GENETIC INFORMATION; PROVIDING PENALTIES.

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

Section 1. SHORT TITLE. -- This act may be cited as the
"Genetic Information Privacy Act".

Section 2. DEFINITIONS. -- As used in the Genetic
Information Privacy Act:

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

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

C. "genetic analysis" means a test of the

1 individual's DNA, gene products or chromosomes that indicates a
2 propensity for or susceptibility to illness, disease, impairment
3 or other disorders, whether physical or mental, or that
4 demonstrates genetic or chromosomal damage due to environmental
5 factors, or carrier status for disease or disorder;

6 D. "genetic information" means information about the
7 genetic makeup of an individual or members of an individual's
8 family resulting from genetic analysis, DNA composition,
9 participation in genetic research or use of genetic services;

10 E. "genetic propensity" means the presence in an
11 individual or members of an individual's family of real or
12 perceived variations in DNA or other genetic material from that
13 of the normal genome that do not represent the outward physical,
14 medical signs of a genetic disease at the time of consideration;

15 F. "insurer" means an insurance company, insurance
16 service or insurance organization that is licensed to engage in
17 the business of insurance in the state and that is subject to
18 state law that regulates insurance within the meaning of
19 Paragraph (2) of Subsection (b) of Section 514 of the federal
20 Employee Retirement Income Security Act of 1974, as amended.
21 "Insurer" does not include an insurance company that is licensed
22 under the Prepaid Dental Plan Law or a company that is solely
23 engaged in the sale of dental insurance and is not licensed
24 under that act, but under another provision of the New Mexico
25 Insurance Code; and

G. "person" means an individual or any other legal
entity.

Section 3. GENETIC ANALYSIS PROHIBITED WITHOUT INFORMED

1 CONSENT- - EXCEPTIONS. - -

2 A. Except as provided in Subsection C of this section,
 3 no person shall obtain genetic information or samples for genetic
 4 analysis from an individual without first obtaining informed
 5 consent from the individual or the individual's authorized
 6 representative.

7 B. Except as provided in Subsection C of this section,
 8 genetic analysis of an individual and collection, retention,
 9 transmission or use of genetic information without the written
 10 informed consent of the individual or the individual's authorized
 11 representative is prohibited.

12 C. An individual's DNA or genetic information or the
 13 results of genetic analysis may be obtained or retained without the
 14 individual's written and informed consent only as authorized by law
 15 or rules of the department of health:

16 (1) to identify an individual in the course of a
 17 criminal investigation by a law enforcement agency;

18 (2) if the individual has been convicted of a
 19 felony and is in the custody of the corrections department, for
 20 purposes of maintaining a DNA database for law enforcement
 21 purposes;

22 (3) to identify deceased individuals;

23 (4) to establish parental identity;

24 (5) to screen newborns;

25 (6) if the DNA, genetic analysis, results or
 genetic information is not identified with the individual or
 individual's family member;

(7) by a court for determination of damage awards

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1 pursuant to this subsection;

2 (8) by medical repositories or registries, as
3 authorized by federal or state law or regulation;

4 (9) for the purpose of medical or scientific
5 research and education, including retention of genetic analysis,
6 information, results and tissues, where the identity of individuals
7 or individuals' family members will not be disclosed; or

8 (10) for the purpose of emergency medical
9 treatment consistent with applicable law.

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

19 Section 4. GENETIC DISCRIMINATION PROHIBITED. --

20 A. Discrimination by an insurer against an individual
21 or member of the individual's family on the basis of genetic
22 analysis for genetic propensity, susceptibility or carrier status
23 for a disease or disorder or genetic information regarding the
24 participation in genetic research or use of genetic services is
25 prohibited. No insurer shall use any genetic analysis or any
genetic information for any purpose other than in the ordinary
conduct of business in connection with life, disability income or
long-term care insurance.

1 B. The provisions of this section do not require a
 2 health insurer to provide particular benefits other than those
 3 provided under the terms of the plan or coverage or prevent the
 4 plan or coverage from establishing limitations or restrictions on
 5 the amount, level, extent or nature of the benefits or coverage for
 6 similarly situated individuals. Individuals are similarly situated
 7 if they have manifested similar physical or mental conditions
 8 whether or not they have genetic propensity, susceptibility or
 9 carrier status. A health insurer shall not consider a genetic
 10 propensity, susceptibility or carrier status as a preexisting
 11 condition for the purpose of limiting or excluding benefits in the
 12 absence of a diagnosis of the condition related to or resulting
 13 from the genetic propensity, susceptibility or carrier status.

14 C. The provisions of this section do not prohibit use
 15 of any genetic analysis of any genetic information by an insurer in
 16 the ordinary conduct of business in connection with life,
 17 disability income or long-term care insurance, provided that any
 18 underwriting action taken in connection with life, disability
 19 income or long-term care insurance on the basis of any genetic
 20 analysis or any genetic information is based on sound actuarial
 21 principles or related to actual or reasonably anticipated
 22 experience.

23 Section 5. PENALTIES. --

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

 B. An individual whose rights pursuant to the

1 provisions of the Genetic Information Privacy Act have been
2 violated may bring a civil action for damages or other relief.

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

6 (1) directing an insurer to provide a policy for
7 hospital and medical expenses, including health insurance, group
8 disability insurance or long-term care coverage, to the injured
9 individual under the same terms and conditions as would have
10 applied had the violation not occurred;

11 (2) damages for economic, bodily or emotional
12 harm;

13 (3) damages for economic losses sustained as a
14 result of negligent violation of that act;

15 (4) damages of up to five thousand dollars
16 (\$5,000) in addition to any economic loss if the violation results
17 from willful or grossly negligent conduct; or

18 (5) if the plaintiff prevails, recovery of
19 reasonable attorney fees and all appropriate court costs from the
20 defendant.

21 D. Pursuant to Subsection C of Section 3 of the Genetic
22 Information Privacy Act, the court may use genetic information to
23 determine the cause of damage or injury and penalty awards.

24 E. Each instance of collection, analysis, retention,
25 disclosure or use of genetic information constitutes a separate and
actionable violation of the Genetic Information Privacy Act.

Section 6. RIGHTS OF RETENTION. --

A. Unless otherwise authorized by Subsection C of

1 Section 3 of the Genetic Information Privacy Act, no person shall
 2 retain an individual's genetic information, gene product or samples
 3 for genetic analysis without first obtaining informed consent from
 4 the individual or the individual's authorized representative. This
 5 subsection does not affect the status of original medical records
 6 of individual patients and the rules of confidentiality and
 7 accessibility applicable to thee records continue in force.

8 B. An individual's genetic information or samples for
 9 genetic analysis shall be destroyed promptly upon the specific
 10 request of that individual or that individual's authorized
 11 representative, unless:

12 (1) retention is necessary for the purposes of a
 13 criminal or death investigation or a criminal or juvenile
 14 proceeding;

15 (2) retention is authorized by order of a court
 16 of competent jurisdiction;

17 (3) retention is authorized under a research
 18 protocol approved by an institutional review board pursuant to
 19 federal law or a medical registry or repository authorized by state
 20 or federal law; or

21 (4) the genetic information or samples for
 22 genetic analysis have been obtained pursuant to Subsection C of
 23 Section 3 of the Genetic Information Privacy Act.

24 C. Actions of an insurer and third parties dealing with
 25 an insurer in the ordinary course of conducting and administering
 the business of life, disability income or long-term care insurance
 are exempt from the provisions of this section. However, before or
 at the time of collecting genetic information for use in conducting

HBIC/HB 395

1 and administering life, disability income or long-term care
2 insurance, the insurer shall notify in writing an applicant for
3 insurance or the insured that the information may be used,
4 transmitted or retained.

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 12, 1997

Mr. President:

Your CORPORATIONS & TRANSPORTATION COMMITTEE, to whom
has been referred

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 395, as amended

has had it under consideration and reports same with recommendation
that it DO PASS.

Respectfully submitted,

Roman M. Maes, III, Chairman

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HBIC/HB 395

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Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 7 For 0 Against

Yes: 7

No: 0

Excused: Fidel, Griego, Robinson

Absent: None

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FORTY-THIRD LEGISLATURE

FIRST SESSION

March 18, 1997

SENATE FLOOR AMENDMENT number _____ to HOUSE BUSINESS AND INDUSTRY
COMMITTEE SUBSTITUTE FOR
HOUSE BILL 395, as amended

Amendment sponsored by Senator Dede Feldman

1. Strike House Business and Industry Committee Amendment 1.
2. On page 3, line 11, strike "authorized".
3. On page 4, line 22, after "this section" insert ", provided that any use of genetic analysis or any genetic information is based on sound actuarial principles or related to actual or reasonable anticipated experience".
4. On page 5, line 2, after "retained" insert "solely for the purpose of conducting and administering the business of life, disability income or long-term care insurance".

FORTY-THIRD LEGISLATURE
FIRST SESSION

1 HBIC/HB 395

2 SFI/HB 395

Page 22

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4 5. On page 5, line 12, after "insurance" insert ", provided
5 that any use of genetic analysis or any genetic information is based
6 on sound actuarial principles or related to actual or reasonable
7 anticipated experience".
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FORTY-THIRD LEGISLATURE
FIRST SESSION

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6. On page 8, line 25, after "retained" insert "solely for the purpose of conducting and administering the business of life, disability income or long-term care insurance".

Dede Feldman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

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