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**HOUSE BILL 331**

**43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998**

**INTRODUCED BY**

**DANICE PICRAUX**

**AN ACT**

**RELATING TO HEALTH; ENACTING THE GENETIC INFORMATION PRIVACY  
ACT; 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 DNA derived from  
ribonucleic acid;**

**B. "gene products" means gene fragments,**

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1 ribonucleic acids or proteins derived from DNA that would be a  
2 reflection of or indicate DNA sequence information;

3 C. "genetic analysis" means a test of a person's  
4 DNA, gene products or chromosomes that indicates a propensity  
5 for or susceptibility to illness, disease, impairment or other  
6 disorders, whether physical or mental; that demonstrates  
7 genetic or chromosomal damage due to environmental factors; or  
8 that indicates carrier status for disease or disorder;

9 D. "genetic information" means information about  
10 the genetic makeup of a person or members of a person's  
11 family, including information resulting from genetic analysis,  
12 DNA composition, participation in genetic research or use of  
13 genetic services;

14 E. "genetic propensity" means the presence in a  
15 person or members of a person's family of real or perceived  
16 variations in DNA or other genetic material from that of the  
17 normal genome that do not represent the outward physical or  
18 medical signs of a genetic disease at the time of  
19 consideration; and

20 F. "insurer" means an insurance company, insurance  
21 service or insurance organization that is licensed to engage  
22 in the business of insurance in the state and that is subject  
23 to state law that regulates insurance within the meaning of  
24 Paragraph (2) of Subsection (b) of Section 514 of the federal  
25 Employee Retirement Income Security Act of 1974, as amended.

. 119375A. 2

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1 "Insurer" does not include an insurance company that is  
2 licensed under the Prepaid Dental Plan Law or a company that  
3 is solely engaged in the sale of dental insurance and is not  
4 licensed under the Prepaid Dental Plan Law, but under another  
5 provision of the New Mexico Insurance Code.

6 Section 3. GENETIC ANALYSIS PROHIBITED WITHOUT INFORMED  
7 CONSENT-- EXCEPTIONS. --

8 A. Except as provided in Subsection C of this  
9 section, no person shall obtain genetic information or samples  
10 for genetic analysis from a person without first obtaining  
11 informed and written consent from the person or the person's  
12 authorized representative.

13 B. Except as provided in Subsection C of this  
14 section, genetic analysis of a person or collection,  
15 retention, transmission or use of genetic information without  
16 the informed and written consent of the person or the person's  
17 authorized representative is prohibited.

18 C. A person's DNA, genetic information or the  
19 results of genetic analysis may be obtained, retained,  
20 transmitted or used without the person's written and informed  
21 consent only:

22 (1) to identify a person in the course of a  
23 criminal investigation by a law enforcement agency;

24 (2) if the person has been convicted of a  
25 felony, for purposes of maintaining a DNA database for law

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1 enforcement purposes;

2 (3) to identify deceased persons;

3 (4) to establish parental identity;

4 (5) to screen newborns;

5 (6) if the DNA, genetic information or  
6 results of genetic analysis are not identified with the person  
7 or person's family members;

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

10 (8) by medical repositories or registries as  
11 authorized by federal or state law or regulation;

12 (9) for the purpose of medical or scientific  
13 research and education, including retention of gene products,  
14 genetic information or genetic analysis if the identity of the  
15 person or person's family members is not disclosed; or

16 (10) for the purpose of emergency medical  
17 treatment consistent with applicable law.

18 D. Actions of an insurer and third parties dealing  
19 with an insurer in the ordinary course of conducting and  
20 administering the business of life, disability income or long-  
21 term care insurance are exempt from the provisions of this  
22 section if the use of genetic analysis or genetic information  
23 is based on sound actuarial principles or related to actual or  
24 reasonably anticipated experience. However, before or at the  
25 time of collecting genetic information for use in conducting

. 119375A. 2

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

7 Section 4. GENETIC DISCRIMINATION PROHIBITED. --

8 A. Discrimination by an insurer against a person  
9 or member of the person's family on the basis of genetic  
10 analysis, genetic information, genetic propensity or  
11 participation in genetic research or use of genetic services  
12 is prohibited.

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

20 C. The provisions of this section do not prohibit  
21 use of genetic analysis or genetic information by an insurer  
22 in the ordinary conduct of business in connection with life,  
23 disability income or long-term care insurance if use of  
24 genetic analysis or genetic information is based on sound  
25 actuarial principles or related to actual or reasonably

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1 anticipated experience.

2 Section 5. RIGHTS OF RETENTION. --

3 A. Unless otherwise authorized by Subsection C of  
4 Section 3 of the Genetic Information Privacy Act, no person  
5 shall retain a person's genetic information, gene products or  
6 samples for genetic analysis without first obtaining informed  
7 and written consent from the person or the person's authorized  
8 representative. This subsection does not affect the status of  
9 original medical records of patients, and the rules of  
10 confidentiality and accessibility applicable to the records  
11 continue in force.

12 B. A person's genetic information or samples for  
13 genetic analysis shall be destroyed promptly upon the specific  
14 request by that person or that person's authorized  
15 representative unless:

16 (1) retention is necessary for the purposes  
17 of a criminal or death investigation or a criminal or juvenile  
18 proceeding;

19 (2) retention is authorized by order of a  
20 court of competent jurisdiction;

21 (3) retention is authorized under a research  
22 protocol approved by an institution review board pursuant to  
23 federal law or a medical registry or repository authorized by  
24 state or federal law; or

25 (4) the genetic information or samples for

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1 genetic analysis have been obtained pursuant to Subsection C  
2 of Section 3 of the Genetic Information Privacy Act.

3 C. Actions of an insurer and third parties dealing  
4 with an insurer in the ordinary course of conducting and  
5 administering the business of life, disability income or long-  
6 term care insurance are exempt from the provisions of this  
7 section. However, before or at the time of collecting genetic  
8 information for use in conducting and administering the  
9 business of life, disability income or long-term care  
10 insurance, the insurer shall notify in writing an applicant  
11 for insurance or the insured that the information may be used,  
12 transmitted or retained solely for the purpose of conducting  
13 and administering the business of life, disability income or  
14 long-term care insurance.

15 Section 6. PENALTIES. --

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

20 B. A person whose rights under the provisions of  
21 the Genetic Information Privacy Act have been violated may  
22 bring a civil action for damages or other relief.

23 C. The court may order a person who violates the  
24 provisions of the Genetic Information Privacy Act to comply  
25 with those provisions and may order other appropriate relief,

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1 including:

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

7 (2) damages for economic, bodily or emotional  
8 harm;

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

11 (4) damages of up to five thousand dollars  
12 (\$5,000) in addition to any economic loss if the violation  
13 results from willful or grossly negligent conduct; or

14 (5) reasonable attorney fees and appropriate  
15 court costs.

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

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

1 FORTY-THIRD LEGISLATURE

2 SECOND SESSION, 1998

3  
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5  
6 February 11, 1998

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8 Mr. Speaker:

9  
10 Your JUDICIARY COMMITTEE, to whom has been referred

11  
12 HOUSE BILL 331

13  
14 has had it under consideration and reports same with  
15 recommendation that it DO PASS, amended as follows:

16 1. On page 4, line 22, after "information" insert for  
17 underwriting purposes".

18  
19 2. On page 5, between lines 6 and 7, insert the  
20 following new subsection to read:

21  
22 "E. Nothing in Section 3, Subsection C (5) (9) and  
23 (10) authorizes obtaining, retaining, transmitting or using  
24 a person's DNA, genetic information or the results of  
25 genetic analysis if the person, his authorized  
representative or his parent or guardian objects on the

FORTY-THIRD LEGISLATURE  
SECOND SESSION, 1998

HJC/HB 331

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basis of religious tenets or practices.”.

3. On page 5, line 10, after “information” strike the comma and insert in lieu thereof “or” and after “propensity” strike “or”.

4. On page 5, strike line 11 in its entirety.

5. On page 5, line 21, after “analysis” insert “, genetic propensity”.

6. On page 5, line 24, after “analysis” insert “, genetic propensity” and after “information” insert “in underwriting”.

7. On page 7, between lines 14 and 15, insert the following new subsection to read:

“D. Nothing in Section 5, Subsection B (3) authorizes retention of a person’s genetic information or

samples for genetic analysis if the person, his authorized

FORTY-THIRD LEGISLATURE  
SECOND SESSION, 1998

HJC/HB 331

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representative or his parent or guardian objects on the  
basis of religious tenets or practices.”.

8. On page 8, line 2, after “insurer” insert “who has  
violated Section 3 or 4 of the Genetic Information Privacy  
Act”.

9. On page 8, strike lines 7 through 10 and insert in  
lieu thereof the following new paragraph:

“(2) actual damages;”

10. Renumber the succeeding paragraphs accordingly.

11. On page 8, line 13, after the semicolon, strike  
the  
word “or” and insert in lieu thereof “and”.

1 FORTY-THIRD LEGISLATURE  
2 SECOND SESSION, 1998

3 HJC/HB 331

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4 Respectfully submitted,  
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9 Thomas P. Foy, Chairman  
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12 Adopted \_\_\_\_\_

Not Adopted \_\_\_\_\_  
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14 (Chief Clerk)

(Chief Clerk)

15  
16 Date \_\_\_\_\_

17 The roll call vote was 9 For 0 Against

18 Yes: 9

19 Excused: Foy, Garcia, Mallory, Vaughn

20 Absent: None  
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FORTY-THIRD LEGISLATURE  
SECOND SESSION

February 13, 1998

HOUSE FLOOR AMENDMENT number \_\_\_\_\_ to HOUSE BILL 331, as amended

Amendment sponsored by Representative Danice Picraux

1. Strike House Judiciary Committee Amendments 2 and 7.

2. On page 5, between lines 6 and 7, insert the following new subsection:

"E. Nothing in Paragraph (5), (6), (8), (9) or (10) of Subsection C of Section 3 authorizes obtaining, retaining, transmitting or using a person's DNA, genetic information or the results of genetic analysis if the person, his authorized representative or his parent or guardian objects on the basis of religious tenets or practices."

3. On page 7, between lines 14 and 15, insert the following new subsection:

"D. Nothing in Paragraph (3) or (4) of Subsection B of Section 5 authorizes retention of a person's genetic information or samples for genetic analysis if the person, his authorized representative or his parent or guardian objects on the basis of

FORTY-THIRD LEGISLATURE  
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religious tenets or practices."

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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chi ef Clerk) (Chi ef Clerk)

Date \_\_\_\_\_

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FORTY-THIRD LEGISLATURE  
SECOND SESSION

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FORTY-THIRD LEGISLATURE  
SECOND SESSION, 1998

February 15, 1998

Mr. President:

Your CORPORATIONS & TRANSPORTATION COMMITTEE, to whom  
has been referred

HOUSE BILL 331, as amended

has had it under consideration and reports same with recommendation  
that it DO PASS, and thence referred to the JUDICIARY  
COMMITTEE.

Respectfully submitted,

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Roman M. Maes, III, Chairman

FORTY-THIRD LEGISLATURE  
SECOND SESSION

1 HF1/ HB331, aa

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2 Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
3 (Chief Clerk) (Chief Clerk)

4  
5 Date \_\_\_\_\_  
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8 The roll call vote was 8 For 1 Against

9 Yes: 8

10 No: Wilson

11 Excused: Robinson

12 Absent: None  
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FORTY-THIRD LEGISLATURE  
SECOND SESSION, 1998

HB 133/a

February 16, 1998

Mr. President:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 331, as amended

has had it under consideration and reports same with recommendation  
that it DO PASS, amended as follows:

1. On page 4, line 4, after "newborns" insert "as authorized by  
federal and state law or regulation".

Respectfully submitted,

\_\_\_\_\_  
Fernando R. Macias, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

FORTY-THIRD LEGISLATURE  
SECOND SESSION, 1998

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The roll call vote was 7 For 0 Against

Yes: 7

No: 0

Excused: Sanchez

Absent: None

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FORTY-THIRD LEGISLATURE  
SECOND SESSION

February 16, 1998

SENATE FLOOR AMENDMENT number \_\_\_\_\_ to HOUSE BILL 331, as  
amended

Amendment sponsored by Senator Cisco McSorley

1. Strike Items 2 and 3 of House Floor Amendment 1.
2. Strike Senate Judiciary Committee Amendment 1.
3. On page 3, line 21, after "consent" insert "pursuant to federal or state law or regulations".
4. On page 4, lines 10 and 11, strike "as authorized by federal or state law or regulation".
5. On page 5, between lines 6 and 7, insert the following new subsection:  

"E. Nothing in Paragraph (5), (6), (8), (9) or (10) of

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FORTY-THIRD LEGISLATURE  
SECOND SESSION

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Subsection C of Section 3 of the Genetic Information Privacy Act authorizes obtaining, retaining, transmitting or using a person's DNA, genetic information or the results of genetic analysis if the person, his authorized representative or guardian, or the parent or guardian of a minor child, objects on the basis of religious tenets or practices. "

6. On page 7, between lines 14 and 15, insert the following new subsection:

"D. Nothing in Paragraph (3) or (4) of Subsection B of Section 5 of the Genetic Information Privacy Act authorizes retention of a person's genetic information or samples for genetic analysis if the person, his authorized representative or guardian, or the parent or guardian of a minor child, objects on the basis of religious tenets or practices. "

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Cisco McSorley

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FORTY-THIRD LEGISLATURE  
SECOND SESSION

SF1/HB 331, aa

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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
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**FORTY-THIRD LEGISLATURE  
SECOND SESSION**

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**FORTY-THIRD LEGISLATURE  
SECOND SESSION, 1998**

February 19, 1998

SENATE FLOOR AMENDMENT number \_\_\_\_\_ to HOUSE BILL 331, as amended

AMENDMENT sponsored by SENATOR VERNON

1. On page 2, line 8, after the semi-colon insert "excluded, however, are routine physical measurements, chemical, blood and urine analysis, tests for drugs, and tests for the presence of HIV virus, and any other tests or analyses commonly accepted in clinical practice at the time ordered;"

2. On page 8, line 24, add new section 7 to read:

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**FORTY-THIRD LEGISLATURE  
SECOND SESSION**

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"SECTION F. APPLICATION OF ACT. -- The provisions of this act shall apply to genetic analysis performed and genetic information and gene products obtained after the effective date of the act."

\_\_\_\_\_  
Senator L. Skip Vernon

Adopted \_\_\_\_\_

Not Adopted \_\_\_\_\_

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(Chief Clerk)  
(Chief Clerk)

Date \_\_\_\_\_

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