

2021 Regular Session

HOUSE BILL NO. 455

BY REPRESENTATIVE DUBUISSON

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

INSURANCE/LIFE: Provides relative to the use of genetic information in underwriting for life and long-term care insurance

1 AN ACT

2 To amend and reenact R.S. 22:1023(A)(introductory paragraph), (8)(a)(introductory
3 paragraph), (13), and (14), (B)(1)(introductory paragraph), (3), (4)(a)(introductory
4 paragraph), and (10)(d) and (e), (C)(2)(introductory paragraph) and (h), (5), and (6),
5 (D)(introductory paragraph), (F)(1)(introductory paragraph) and (2) and (G), and
6 R.S. 22:1964(24) and to enact R.S. 22:918, relative to the use of genetic testing in
7 underwriting for life and long-term care insurance; to prohibit discrimination relative
8 to the use of genetic testing in underwriting for life and long-term care insurance; to
9 provide relative to unfair or deceptive practices; to provide for definitions; to provide
10 for penalties; to provide for technical changes; and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 22:1023(A)(introductory paragraph), (8)(a)(introductory paragraph),
13 (13), and (14), (B)(1)(introductory paragraph), (3), (4)(a)(introductory paragraph), and
14 (10)(d) and (e), (C)(2)(introductory paragraph) and (h), (5), and (6), (D)(introductory
15 paragraph), (F)(1)(introductory paragraph) and (2) and (G) and R.S. 22:1964(24) are hereby
16 amended and reenacted and R.S. 22:918 is hereby enacted to read as follows:

17 §918. Prohibited discrimination; genetic information; disclosure requirements;

18 definitions:

19 A. As used in this Section, the following definitions apply:

20 (1) "Collection" means obtaining a DNA sample or samples.

1 (2) "Compulsory disclosure" means any disclosure of genetic information
2 mandated or required by federal or state law in connection with a judicial, legislative,
3 or administrative proceeding.

4 (3) "Disclose" means to convey or to provide access to genetic information
5 to a person other than the individual.

6 (4) "DNA" means deoxyribonucleic acid including mitochondrial DNA,
7 complementary DNA, as well as any DNA derived from ribonucleic acid (RNA).

8 (5) "Family" includes an individual's blood relatives and any legal relatives,
9 including a spouse or adopted child, who may have a material interest in the genetic
10 information of the individual.

11 (6) "Genetic analysis" means the process of characterizing genetic
12 information from a human tissue sample.

13 (7) "Genetic characteristic" means any gene or chromosome, or alteration
14 thereof, that is scientifically or medically believed to cause a disease, disorder, or
15 syndrome, or to be associated with a statistically significant increased risk of
16 development of a disease, disorder, or syndrome.

17 (8)(a) "Genetic information" means all information about genes, gene
18 products, inherited characteristics, or family history or pedigree that is expressed in
19 common language and includes each of the following:

20 (i) An individual's genetic test.

21 (ii) The genetic tests of the family members of an individual.

22 (iii) The manifestation of a disease or disorder in family members of an
23 individual.

24 (iv) With respect to an individual or family member of an individual who is
25 a pregnant woman, genetic information of any fetus or embryo carried by such
26 pregnant woman, and with respect to an individual or family member of an
27 individual utilizing an assisted reproductive technology, genetic information of any
28 embryo legally held by the individual or family member.

1 (b) "Genetic information" does not mean information about the sex or age
2 of any individual.

3 (9) "Genetic services" means a genetic test, genetic counseling, including
4 obtaining, interpreting, or assessing genetic information, or genetic education.

5 (10)(a) "Genetic test" means any test for determining the presence or absence
6 of genetic characteristics in an individual, including tests of nucleic acids, such as
7 DNA, RNA, and mitochondrial DNA, chromosomes, or proteins in order to diagnose
8 or identify a genetic characteristic or that detects genotypes, mutation, or
9 chromosomal changes.

10 (b) "Genetic test" does not mean an analysis of proteins or metabolites that
11 either:

12 (i) Does not detect genotypes, mutations, or chromosomal changes.

13 (ii) Is directly related to a manifested disease, disorder, or pathological
14 condition that could be reasonably detected by a healthcare professional with
15 appropriate training and expertise in the field of medicine involved.

16 (11) "Individual" means the source of a human tissue sample from which a
17 DNA sample is extracted or genetic information is characterized.

18 (12) "Individual identifier" means a name, address, social security number,
19 health insurance identification number, or similar information by which the identity
20 of an individual can be determined with reasonable accuracy, either directly or by
21 reference to other available information. Such term does not include characters,
22 numbers, or codes assigned to an individual or a DNA sample that cannot singly be
23 used to identify an individual.

24 (13) "Insurer" means any person engaged in the business of making life
25 insurance policies or annuity contracts, or any other insurance contract of this kind,
26 including a group insurance plan or insurance agents and third-party administrators.

27 (14) "Person" means all persons other than the individual who is the source
28 of a tissue sample and includes a family, corporation, partnership, association, joint

1 venture, government, governmental subdivision or agency, and any other legal or
2 commercial entity.

3 (15) "Research" means scientific investigation that includes systematic
4 development and testing of hypotheses for the purpose of increasing knowledge.

5 (16) "Storage" means retention of a DNA sample or of genetic information
6 for an extended period of time after the initial testing process.

7 (17) "Underwriting purposes" means rules for or determination of eligibility,
8 including enrollment and continued eligibility, for benefits under the plan or
9 coverage, the computation of premium or contribution amounts under the plan or
10 coverage, and other activities related to the creation, renewal, or replacement of a
11 contract or policy issued by an insurer.

12 B.(1) No insurer shall, on the basis of any genetic information concerning
13 an individual or family member or on the basis of an individual's or family member's
14 request for or receipt of genetic services, or the refusal to submit to a genetic test or
15 make available the results of a genetic test, do any of the following:

16 (a) Terminate, restrict, limit, or otherwise apply conditions to the coverage
17 of an individual or family member under the policy or plan, or restrict the sale of the
18 policy or plan to an individual or family member.

19 (b) Cancel or refuse to renew the coverage of an individual or family
20 member under the policy or plan.

21 (c) Deny coverage or exclude an individual or family member from coverage
22 under the policy or plan.

23 (d) Impose a rider that excludes coverage for certain benefits or services
24 under the policy or plan.

25 (e) Establish differentials in premium rates or cost sharing for coverage
26 under the policy or plan.

27 (f) Otherwise discriminate against an individual or family member in the
28 provision of insurance.

1 (2) No insurer shall require an applicant for coverage under the policy or
2 plan, or an individual or family member who is presently covered under a policy or
3 plan, to be the subject of a genetic test or to be subjected to questions relating to
4 genetic information.

5 (3) All insurers shall, in the application or enrollment information provided
6 by the insurer concerning a policy or plan, provide an applicant or enrollee with a
7 written statement disclosing the rights of the applicant or enrollee pursuant to the
8 provisions of this Section. Such statement shall be in a form and manner that is
9 noticeable to and understandable by an average applicant or enrollee.

10 (4)(a) No insurer shall request, require, or purchase genetic information with
11 respect to either of the following:

12 (i) An individual or family member of an individual for underwriting
13 purposes.

14 (ii) Any individual or family member of an individual prior to such
15 individual's enrollment under the plan or coverage in connection with such
16 enrollment.

17 (b) If an insurer obtains genetic information incidental to the requesting,
18 requiring, or purchasing of other information concerning any individual, such
19 request, requirement, or purchase shall not be considered a violation of Item (a)(ii)
20 of this Paragraph if such request, requirement, or purchase is not in violation of Item
21 (a)(i) of this Paragraph.

22 (5)(a) No insurer shall request or require that an individual, a family member
23 of such individual, or a group member undergo a genetic test.

24 (b) Subparagraph (a) of this Paragraph shall not be construed to limit the
25 authority of a healthcare professional who is providing healthcare services to an
26 individual to request that such individual undergo a genetic test.

27 (6)(a) No insurer shall establish rules for eligibility, including continued
28 eligibility, of any individual or an individual's family member to enroll or continue
29 enrollment based on genetic information.

1 (b) Nothing in Subparagraph (a) of this Paragraph or in Items (4)(a)(i) and
2 (ii) of this Subsection shall be construed to preclude an insurer from establishing
3 rules for eligibility for an individual to enroll in insurance coverage based on the
4 manifestation of a disease or disorder in that individual.

5 (7)(a) No insurer shall adjust premium or contribution amounts for an
6 individual or group plan on the basis of genetic information concerning the
7 individual or a family member of the individual.

8 (b) Nothing in Subparagraph (a) of this Paragraph shall be construed to
9 preclude an insurer from adjusting premium or contribution amounts for an
10 individual on the basis of a manifestation of a disease or disorder in that individual.
11 In such case, the manifestation of a disease or disorder in one individual cannot also
12 be used as genetic information about other individuals covered under the policy
13 issued to such individual and to further increase premium or contribution amounts.

14 (c) Nothing in Subparagraph (a) of this Paragraph shall be construed to
15 preclude an insurer from increasing the premium for an employer based upon the
16 manifestation of a disease or disorder of an individual who is enrolled in the plan.
17 In such case, the manifestation of a disease or disorder in one individual cannot also
18 be used as genetic information about other group members and to further increase
19 the premium for the employer.

20 (8) Notwithstanding Subparagraph (5)(a) of this Subsection, an insurer may
21 request, but not require, that an individual, family member of an individual, or a
22 group member undergo a genetic test if each of the following conditions is met:

23 (a) The request is made pursuant to research that complies with Part 46 of
24 Title 45, Code of Federal Regulations, or equivalent federal regulations, and any
25 applicable state or local law or regulations for the protection of human subjects in
26 research.

27 (b) The insurer clearly indicates to each individual, or in the case of a minor
28 child, to the legal guardian of such child, to whom the request is made both that:

29 (i) Compliance with the request is voluntary.

1 (ii) Noncompliance will have no effect on enrollment status or premium, or
2 contribution amounts.

3 (c) No genetic information collected or acquired pursuant to the provisions
4 of this Paragraph shall be used for underwriting purposes.

5 (d) The insurer notifies the secretary of the United States Department of
6 Health and Human Services in writing that the insurer is conducting activities
7 according to the exception provided pursuant to this Paragraph, including a
8 description of the activities conducted.

9 (e) The insurer complies with such other conditions as the secretary of the
10 United States Department of Health and Human Services may by regulation require
11 for activities conducted pursuant to this Paragraph.

12 C.(1) No insurer shall obtain genetic information from an insured or enrollee,
13 or from his DNA sample, without first obtaining written informed consent from the
14 insured, enrollee, or his representative.

15 (2) To be valid, an authorization for disclosure of genetic information shall
16 satisfy the following criteria:

17 (a) Be in writing, signed by the individual and dated on the date of such
18 signature.

19 (b) Identify the person permitted to make the disclosure.

20 (c) Describe the specific genetic information to be disclosed.

21 (d) Identify the person to whom the information is to be disclosed.

22 (e) Describe with specificity the purpose for which the disclosure is being
23 made.

24 (f) State the date upon which the authorization will expire, which in no event
25 shall be more than sixty days after the date of the authorization.

26 (g) Include a statement that the authorization is subject to revocation at any
27 time before the disclosure is actually made or the individual is made aware of the
28 details of the genetic information.

1 (h) Include a statement that the authorization is invalid if used for any
2 purpose other than the described purpose for which the disclosure is made.

3 (3) A copy of the authorization shall be provided to the individual.

4 (4) An individual may revoke or amend the authorization, in whole or in
5 part, at any time.

6 (5) A general authorization for the release of medical records or medical
7 information shall not be construed as an authorization for disclosure of genetic
8 information. With respect to medical records that contain genetic information, the
9 requirements for disclosure of genetic information prescribed in this Section shall be
10 complied with.

11 (6) Nothing in this Section exempts a covered entity from the requirements
12 of the Health Insurance Portability and Accountability Act of 1996 pertaining to the
13 collection, use, or disclosure of genetic information, which for purposes of the
14 Health Insurance Portability and Accountability Act of 1996, is defined as "health
15 information" under 42 U.S.C. 1320d(4)(b) and 1320d-9.

16 D. The requirements of this Section do not apply to the genetic information
17 obtained:

18 (1) By a state, parish, municipal, or federal law enforcement agency for the
19 purposes of establishing the identity of a person in the course of a criminal
20 investigation or prosecution.

21 (2) To determine paternity.

22 (3) To determine the identity of deceased individuals.

23 (4) For anonymous research where the identity of the subject will not be
24 released.

25 (5) Pursuant to newborn screening requirements established by state or
26 federal law.

27 (6) As authorized by federal law for the identification of persons.

1 (7) By the Department of Children and Family Services or by a court having
2 juvenile jurisdiction as set forth in Children's Code Article 302 for the purposes of
3 child protection investigations or neglect proceedings.

4 (8) For treatment, payment, and healthcare operations by an insurer
5 consistent with the federal Health Insurance Portability and Accountability Act of
6 1996 and its related regulations.

7 (9) For maintenance of information by an insurer in accordance with record
8 retention requirements.

9 E. An insured's or enrollee's genetic information is the property of the
10 insured or enrollee. No person shall retain an insured's or enrollee's genetic
11 information without first obtaining authorization from the insured, enrollee, or his
12 representative, unless retention is:

13 (1) For the purposes of a criminal or death investigation or for use of in a
14 criminal or juvenile proceeding.

15 (2) To determine paternity.

16 F.(1) Any person who through negligence collects, stores, or analyzes a
17 DNA sample in violation of this Section, or discloses genetic information in
18 violation of this Section, is liable to the individual for each such violation in an
19 amount equal to all of the following:

20 (a) Any actual damages sustained as a result of the collection, storage,
21 analysis, or disclosure, or fifty thousand dollars, whichever is greater.

22 (b) Treble damages, in any case where such a violation resulted in profit or
23 monetary gain.

24 (c) The costs of the action together with reasonable attorney fees as
25 determined by the court, in the case of a successful action to enforce any liability
26 pursuant to the provisions of this Section.

27 (2) Any person who, through a request, the use of persuasion, under threat,
28 or with a promise of reward, willfully induces another to collect, store, or analyze a
29 DNA sample, or willfully discloses genetic information, or for any other reason

1 willfully collects, stores, or analyzes the DNA sample of an individual in violation
2 of this Section is liable to the individual for each such violation in an amount equal
3 to both of the following:

4 (a) Any actual damages sustained as a result of the collection, analysis, or
5 disclosure, or one hundred thousand dollars, whichever is greater.

6 (b) The costs of the action together with reasonable attorney fees as
7 determined by the court, in the case of a successful action pursuant to the provisions
8 of this Section.

9 * * *

10 §1023. Prohibited discrimination; genetic information; disclosure requirements;
11 definitions

12 A. As used in this Section, the following ~~terms shall have the following~~
13 ~~meanings~~ definitions apply:

14 * * *

15 (8)(a) "Genetic information" means all information about genes, gene
16 products, inherited characteristics, or family ~~history/pedigree~~ history or pedigree that
17 is expressed in common language and ~~shall include~~ includes each of the following:

18 * * *

19 (13) "Insurer" means any hospital, health, or medical expense insurance
20 policy, hospital or medical service contract, employee welfare benefit plan,
21 long-term care policy, health and accident insurance policy, or any other insurance
22 contract of this type, including a group insurance plan, or any policy of group, family
23 group, blanket, or association health and accident insurance, a self-insurance plan,
24 health maintenance organization, and preferred provider organization, including
25 insurance agents and third-party administrators, which delivers or issues for delivery
26 in this state an insurance policy or plan.

27 (14) "Person" means all persons other than the individual who is the source
28 of a tissue sample and ~~shall include~~ includes a family, corporation, partnership,

1 association, joint venture, government, governmental subdivision or agency, and any
2 other legal or commercial entity.

3 * * *

4 B.(1) No insurer shall, on the basis of any genetic information concerning
5 an individual or family member or on the basis of an individual's or family member's
6 request for or receipt of genetic services, or the refusal to submit to a genetic test or
7 make available the results of a genetic test, do any of the following:

8 * * *

9 (3) All insurers shall, in the application or enrollment information provided
10 by the insurer concerning a policy or plan, provide an applicant or enrollee with a
11 written statement disclosing the rights of the applicant or enrollee ~~under~~ pursuant to
12 the provisions of this Section. Such statement shall be in a form and manner that is
13 noticeable to and understandable by an average applicant or enrollee.

14 (4)(a) No insurer shall request, require, or purchase genetic information with
15 respect to either of the following:

16 * * *

17 (10) Notwithstanding Subparagraph (5)(a) of this Subsection, an insurer
18 offering health insurance coverage in the individual or group market may request,
19 but not require, that an individual, family member of an individual, or a group
20 member undergo a genetic test if each of the following conditions is met:

21 * * *

22 (d) The insurer notifies the secretary of the United States Department of
23 Health and Human Services in writing that the ~~issuer~~ insurer is conducting activities
24 ~~pursuant~~ according to the exception provided ~~for under~~ pursuant to this Paragraph,
25 including a description of the activities conducted.

26 (e) The insurer complies with such other conditions as the secretary of the
27 United States Department of Health and Human Services may by regulation require
28 for activities conducted ~~under~~ pursuant to this Paragraph.

1 C.

2 * * *

3 (2) To be valid, an authorization for disclosure of genetic information shall
4 satisfy the following criteria:

5 * * *

6 (h) Include a statement that the authorization ~~shall be~~ is invalid if used for
7 any purpose other than the described purpose for which the disclosure is made.

8 * * *

9 (5) A general authorization for the release of medical records or medical
10 information shall not be construed as an authorization for disclosure of genetic
11 information. With respect to medical records that contain genetic information, the
12 requirements for disclosure of genetic information ~~under~~ prescribed in this Section
13 ~~must~~ shall be complied with.

14 (6) Nothing in this Section ~~shall exempt~~ exempts a covered entity from the
15 requirements of the Health Insurance Portability and Accountability Act of 1996
16 pertaining to the collection, use, or disclosure of genetic information, which for
17 purposes of the Health Insurance Portability and Accountability Act of 1996, is
18 defined as "health information" under 42 U.S.C. 1320d(4)(b) and 1320d-9.

19 * * *

20 D. The requirements of this Section ~~shall~~ do not apply to the genetic
21 information obtained:

22 * * *

23 F.(1) Any person who through negligence collects, stores, or analyzes a
24 DNA sample in violation of this Section, or discloses genetic information in
25 violation of this Section, ~~shall be~~ is liable to the individual for each such violation
26 in an amount equal to all of the following:

27 * * *

28 (2) ~~Any person who either:~~

1 (a) ~~Through a request, the use of persuasion, under threat, or with a promise~~
2 ~~of reward, willfully induces another to collect, store, or analyze a DNA sample in~~
3 ~~violation of this Section.~~

4 (b) ~~Willfully collects, stores, or analyzes a DNA sample in violation of this~~
5 ~~Section, or willfully discloses genetic information in violation of this Section, shall~~
6 ~~be liable to the individual for each such violation in an amount equal to:~~

7 Any person who, through a request, the use of persuasion, under threat, or
8 with a promise of reward, willfully induces another to collect, store, or analyze a
9 DNA sample, or willfully discloses genetic information, or for any other reason
10 willfully collects, stores, or analyzes the DNA sample of an individual in violation
11 of this Section is liable to the individual for each such violation in an amount equal
12 to both of the following:

13 (i)(a) Any actual damages sustained as a result of the collection, analysis, or
14 disclosure, or one hundred thousand dollars, whichever is greater.

15 (ii)(b) The costs of the action together with reasonable attorney fees as
16 determined by the court, in the case of a successful action pursuant to the provisions
17 of this Section.

18 G. Notwithstanding any provision to the contrary, this Section does not apply
19 to any actions of an insurer or third parties dealing with an insurer taken in the
20 ordinary course of business in connection with the sale, issuance, or administration
21 of a life, disability income, ~~long term care~~, or critical illness insurance policy. For
22 the purposes of this Section, "critical illness" insurance policy ~~shall mean~~ means
23 health insurance providing a principle sum of benefit following diagnosis of
24 specifically named perils.

25 * * *

26 §1964. Methods, acts, and practices which are defined as unfair or deceptive

27 The following are declared to be unfair methods of competition and unfair
28 or deceptive acts or practices in the business of insurance:

29 * * *

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 (24) The discrimination against an insured, enrollee, or beneficiary in the
 2 issuance, payment of benefits, withholding of coverage, cancellation or nonrenewal
 3 of a policy, contract, plan, or program based upon the results of a genetic test or
 4 receipt of genetic information. Actions of an insurer or third parties dealing with an
 5 insurer taken in the ordinary course of business in connection with the sale, issuance,
 6 or administration of a ~~life~~, disability income, or long-term care insurance policy are
 7 exempt from the provisions of this Paragraph.

8 * * *

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 455 Original

2021 Regular Session

DuBuisson

Abstract: Applies provisions that prohibit the use of genetic testing for health insurance and underwriting purposes to life and long-term care insurance policies and applies prohibitions for unfair or deceptive acts or practices to life and long-term care insurance policies.

Present law (R.S. 22:1023) provides certain definitions and generally prohibits an insurer offering health insurance coverage in the individual or group market from adversely affecting an enrollee's coverage due to the enrollee's refusal to submit to a genetic test or to make genetic testing results available to the insurer. Further prohibits an insurer offering health insurance coverage from using collected or acquired genetic information for underwriting purposes.

Proposed law (R.S. 22:1023(A)(13) and (G)) modifies present law to extend application to long-term care insurance policies. Otherwise retains present law.

Present law (R.S. 22:1964(24)) exempts life, disability income, and long-term care insurance policies from prohibitions against unfair or deceptive acts or practices. Proposed law deletes life and long-term care insurance policies from the present law exemption. Otherwise retains present law.

Proposed law (R.S. 22:918) reproduces present law (R.S. 22:1023) to extend application to insurers in the business of making and underwriting life insurance policies or annuity contracts. Makes modifications specific for application to life insurance policies and annuity contracts.

Proposed law makes technical changes.

(Amends R.S. 22:1023(A)(intro. para.), (8)(a)(intro. para.), (13), and (14), (B)(1)(intro. para.), (3), (4)(a)(intro. para.), and (10)(d) and (e), (C)(2)(intro. para.) and (h), (5), and (6), (D)(intro. para.), (F)(1)(intro. para.) and (2) and (G) and 1964(24); Adds R.S. 22:918)