

SB58 INTRODUCED



1 SB58
2 YTEI66N-1
3 By Senators Orr, Melson
4 RFD: Banking and Insurance
5 First Read: 06-Feb-24



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SYNOPSIS:

Existing law does not provide general privacy protections for an individual's DNA.

This bill would make it a crime, with exceptions including criminal investigation and certain legal proceedings, to collect, analyze, or transfer an individual's DNA without the individual's express consent. The bill would require notice to an individual of results of a genetic test undergone by the individual when applying for employment, a loan, credit, an educational opportunity, and certain types of insurance.

This bill would also prohibit health, life, and long-term care insurers from using the results of an individual's DNA analysis to make coverage and premium decisions, and authorize the Commissioner of Insurance to enforce the prohibition.

Section 111.05 of the Constitution of Alabama of 2022, prohibits a general law whose purpose or effect would be to require a new or increased expenditure of local funds from becoming effective with regard to a local governmental entity without enactment by a 2/3 vote unless: it comes within one of a number of specified exemptions; it is approved by the affected entity; or the Legislature appropriates funds, or



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29 provides a local source of revenue, to the entity for
30 the purpose.

31 The purpose or effect of this bill would be to
32 require a new or increased expenditure of local funds
33 within the meaning of the section. However, this bill
34 does not require approval of a local government entity
35 or enactment by a 2/3 vote to become effective because
36 it comes within one of the specified exceptions
37 contained in the section.

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A BILL

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TO BE ENTITLED

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AN ACT

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44 Relating to genetic privacy; to make it unlawful with
45 certain exceptions to procure, use, or transfer an
46 individual's DNA without the individual's express consent; to
47 provide criminal penalties for violations; to prohibit
48 entities that issue health, life, and long-term care insurance
49 coverage from discriminating against individuals on the basis
50 of genetic test results; and to authorize the Commissioner of
51 Insurance to enforce the prohibition; and in connection
52 therewith would have as its purpose or effect the requirement
53 of a new or increased expenditure of local funds within the
54 meaning of Section 111.05 of the Constitution of Alabama of
55 2022.

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BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:



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57 Section 1. For the purposes of Sections 1 and 2, the
58 following terms have the following meanings:

59 (1) DNA ANALYSIS. The medical and biological
60 examination and analysis of an individual's DNA to identify
61 the presence and composition of genes in that individual's
62 body. The term includes DNA typing and genetic testing.

63 (2) DNA SAMPLE. Any human biological specimen from
64 which DNA can be extracted, or the DNA extracted from the
65 specimen. The term does not include a routine chemical, blood,
66 or urine analysis unless conducted for the purpose of DNA
67 analysis.

68 (3) EXCLUSIVE PROPERTY. The right of the individual
69 whose DNA has been extracted or analyzed to exercise control
70 over his or her DNA sample and any results of his or her DNA
71 analysis with regard to the collection, use, retention,
72 maintenance, disclosure, or destruction of the sample or
73 analysis results.

74 (4) EXPRESS CONSENT. An authorization by an individual
75 whose DNA is to be extracted or analyzed, or by that
76 individual's legal guardian or authorized representative,
77 which is memorialized in writing or in an electronic format
78 demonstrating an intentional decision, after the individual
79 receives a clear and prominent disclosure in writing regarding
80 the manner of collection, use, retention, maintenance, or
81 disclosure of a DNA sample or results of a DNA analysis for
82 specified purposes. A single express consent may authorize
83 every instance of a specified purpose or use.

84 Section 2. (a) Except as provided in this section or in



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85 Section 3, an individual may only perform a DNA analysis with
86 express consent. The results of a DNA analysis, whether held
87 by a public or private entity, are the exclusive property of
88 the individual tested, are confidential, and may not be
89 disclosed without express consent.

90 (b) A person who performs a DNA analysis or receives
91 records, results, or findings of a DNA analysis shall provide
92 the individual tested with notice in writing that the analysis
93 was performed or that the records, results, or findings were
94 received. The notice shall state any of the following that may
95 be applicable under the express consent given by the
96 individual:

97 (1) That upon the written request of the individual
98 tested, the information will be made available to his or her
99 physician.

100 (2)a. That if the DNA sample was taken and the DNA
101 analysis was performed as part of the individual's application
102 for an educational opportunity, employment, loan, mortgage,
103 credit, or insurance other than health insurance, life
104 insurance, or long-term care insurance, the notice shall state
105 that the results of the DNA analysis were used in a decision
106 to grant or deny the individual's application for any of the
107 same.

108 b. That if the information was used in any decision
109 that resulted in a denial, the analysis shall be repeated to
110 verify the accuracy of the first analysis, and if the first
111 analysis is found to be inaccurate, the denial shall be
112 reviewed.



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113 (c) This act does not apply to the collection of a DNA
114 sample, performance of a DNA analysis, or the results of a DNA
115 analysis used for the purposes of any of the following:

116 (1) Criminal investigation or prosecution.

117 (2) Compliance with a subpoena, summons, or other
118 lawful court order.

119 (3) Compliance with federal law.

120 (4) Medical diagnosis, conducting quality assessments,
121 improvement activities, or treatment of a patient when either
122 of the following are true:

123 a. Express consent for clinical laboratory analysis of
124 the DNA sample was obtained by the health care practitioner
125 who collected the DNA sample.

126 b. The medical diagnosis, quality assessments,
127 improvement activities, or treatment of a patient was
128 performed by a clinical laboratory certified by the Centers
129 for Medicare and Medicaid Services.

130 (5) Determination of paternity pursuant to Chapter 17
131 of Title 26 of the Code of Alabama 1975, or custody pursuant
132 to Chapter 3 of Title 30 of the Code of Alabama 1975.

133 (6) Any purpose authorized pursuant to Article 2 of
134 Chapter 18 of Title 36, Code of Alabama 1975, or Section
135 12-15-135, Code of Alabama 1975.

136 (7) Conducting research, and designing and preparing
137 the research, subject to the requirements of, and in
138 compliance with, 21 C.F.R. Parts 50 and 56, and 45 C.F.R.
139 Parts 46, 160, and 164; or using information that is
140 deidentified consistent with 45 C.F.R. Parts 160 and 164 and



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141 that is originally collected and maintained for research
142 subject to the requirements of, and in compliance with, 21
143 C.F.R. Parts 50 and 56, and 45 C.F.R. Parts 46, 160, and 164.

144 Section 3. (a)(1) It is unlawful for a person to
145 willfully, and without express consent, collect or retain an
146 individual's DNA sample with the intent to perform DNA
147 analysis.

148 (2) A violation of this subsection is a Class A
149 misdemeanor.

150 (b)(1) It is unlawful for a person to willfully, and
151 without express consent, submit an individual's DNA sample for
152 DNA analysis or analyze an individual's DNA sample or arrange
153 for the analysis of the same.

154 (2) A violation of this subsection is a Class D felony.

155 (c)(1) It is unlawful for a person to willfully, and
156 without express consent, disclose an individual's DNA analysis
157 results to a third party.

158 (2) A violation of this subsection is a Class D felony.

159 (3) It is not a violation of this subsection to
160 disclose an individual's DNA analysis results if the results
161 were previously voluntarily disclosed by either the individual
162 whose DNA was analyzed or his or her legal guardian or
163 authorized representative.

164 (d)(1) It is unlawful for a person to willfully, and
165 without express consent, sell or otherwise transfer an
166 individual's DNA sample or the results of an individual's DNA
167 analysis to a third party, regardless of whether the DNA
168 sample was originally collected, retained, or analyzed with



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169 express consent.

170 (2) A violation of this subsection is a Class C felony.

171 (e) Each instance of collection or retention,
172 submission or analysis, or disclosure, sale, or transfer in
173 violation of this section constitutes a separate violation for
174 which a separate penalty is authorized.

175 Section 4. (a) For the purposes of this section, the
176 following terms have the following meanings:

177 (1) DNA Analysis. The same meaning as in Section 1 of
178 this act.

179 (2) GENETIC INFORMATION. Information derived from DNA
180 analysis to determine the presence or absence of a
181 scientifically identifiable gene, chromosome, or mutation,
182 including carrier status, in an individual's DNA sample which
183 is believed to cause a disease, disorder, or syndrome, or is
184 associated with a statistically increased risk of developing
185 the disease, disorder, or syndrome, for which the individual
186 is asymptomatic at the time the DNA sample was taken.

187 (3) HEALTH INSURER. Any person that offers for sale or
188 administers a health insurance plan in this state, or
189 contracts with health care providers to furnish specified
190 health care services including hospital, physician, and
191 medical treatment to enrollees covered under a health
192 insurance plan, including preferred provider policies and
193 health maintenance organization subscriber contracts.

194 (4) LIFE INSURER. Any person that offers or administers
195 contracts that pay money to a designated beneficiary in one
196 lump sum or in installments upon the death of the insured,



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197 including annuity contracts, combined life and health and
198 accident insurance, and including but not limited to those
199 policies regulated by Chapters 15, 16, and 18 of Title 27,
200 Code of Alabama 1975.

201 (5) LONG-TERM CARE INSURER. Any person that offers or
202 administers long-term care insurance policies as defined in
203 Section 27-19-103, Code of Alabama 1975.

204 (b) (1) In the absence of a diagnosis of a condition
205 related to genetic information, a health insurer, life
206 insurer, or long-term care insurer authorized to transact
207 business in this state may not cancel, limit, or deny
208 coverage, or establish differentials in premium rates, based
209 on the information.

210 (2) A health insurer, life insurer, or long-term care
211 insurer may not require or solicit genetic information, use
212 the results of DNA analysis, or consider an individual's
213 decisions or actions relating to DNA analysis or genetic
214 information provided to the individual in any manner for any
215 insurance purpose.

216 (3) This section does not apply to the underwriting or
217 issuance of an accident-only policy, dental policy, vision
218 policy, or supplemental insurance such as a hospital indemnity
219 or fixed indemnity policy, or any other actions of an insurer
220 directly related to an accident-only policy, dental policy,
221 vision policy, or supplemental insurance such as a hospital
222 indemnity or fixed indemnity policy.

223 (4) Nothing in this section shall be construed as
224 preventing a health insurer, life insurer, or long-term care



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225 insurer from accessing an individual's medical record as part
226 of an application exam. Nothing in this section prohibits a
227 health insurer, life insurer, or long-term care insurer from
228 considering a medical diagnosis included in an individual's
229 medical record, even if a diagnosis was made based on the
230 results of a DNA analysis.

231 (c) A certificate of authority issued by the Department
232 of Insurance to an insurer is subject to suspension,
233 revocation, or other administrative penalty provided by law at
234 the discretion of the Commissioner of Insurance for any
235 violation of this section.

236 Section 5. Although this bill would have as its purpose
237 or effect the requirement of a new or increased expenditure of
238 local funds, this bill is excluded from further requirements
239 and application under Section 111.05 of the Constitution of
240 Alabama 2022, because the bill defines a new crime or amends
241 the definition of an existing crime.

242 Section 6. This act shall become effective on October
243 1, 2024.