

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 142
Finance

(Senator Klausmeier)

**Genetic Testing - Prohibitions on Disability, Life, and Long-Term Care
Insurance (Genetic Testing Protection Act of 2024)**

This bill prohibits an insurer that offers, issues, or delivers a life insurance, long-term care insurance, or disability insurance policy or contract in the State from taking specified adverse actions related to genetic testing against an applicant or insured. Existing enforcement authority for the Insurance Commissioner and prohibitions against discrimination in underwriting are expressly applied for the enforcement of the bill. The bill does not prohibit an insurer from accessing an applicant's medical record as part of the application process.

Fiscal Summary

State Effect: Minimal special fund revenue increase for the Maryland Insurance Administration in FY 2025 only from the \$125 rate and form filing fee; review of additional filings can be handled with existing resources. General fund revenues may be affected, as discussed below; however, any such impact, if realized, is anticipated to be minimal.

Local Effect: The bill does not directly affect local government operations or finances.

Small Business Effect: None.

Analysis

Bill Summary: "Gene product" means the biochemical material, either RNA or protein, made by a gene. "Genetic information" means information (1) derived from a genetic test about chromosomes, genes, gene products, or inherited characteristics that may derive from an individual or a family member; (2) not obtained for diagnostic or therapeutic purposes; and (3) obtained at a time when the individual to whom the information relates is

asymptomatic for the disease, disorder, illness, or impairment to which the information relates. “Genetic services” means health services that are provided to obtain, assess, or interpret genetic information or the results of genetic tests. “Genetic test” means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites that detects genotypes, mutations, or chromosomal changes.

An insurer that offers, issues, or delivers a life insurance, long-term care insurance, or disability insurance policy or contract in the State may not:

- deny or limit coverage based solely on whether an applicant or policy or contract holder has undergone a genetic test;
- prohibit, as a condition of continuing coverage, a policy or contract holder from undergoing a genetic test; or
- otherwise use a genetic test, its results, genetic information, or a request for genetic services to reject, deny, limit, cancel, refuse to renew, increase the rates of, affect the terms or conditions of, or otherwise affect a life insurance, long-term care insurance, or disability insurance policy or contract.

The bill expressly authorizes the Insurance Commissioner to issue an order for a violation of the bill using the Commissioner’s existing enforcement powers that allow the Commissioner to (1) deny, refuse to renew, suspend, and revoke an insurer’s certificate of authority; (2) impose a civil penalty in lieu of suspending or revoking a certificate of authority; (3) send and enforce cease and desist orders; and (4) order an insurer to accept a risk.

Current Law:

Genetic Information and Insurance Policies

Except for life insurance policies, annuity contracts, long-term care insurance policies, or disability insurance policies, an insurer, nonprofit health service plan, or health maintenance organization may not:

- use a genetic test, its results, genetic information, or a request for genetic services, to reject, deny, limit, cancel, refuse to renew, increase the rates of, affect the terms or conditions of, or otherwise affect a health insurance policy or contract;
- request or require a genetic test, the results of a genetic test, or genetic information for the purposes of determining whether or not to issue or renew health benefits coverage; or

- release identifiable genetic information or the results of a genetic test to unauthorized persons without the prior written authorization of the individual from whom the test results or genetic information was obtained.

Disclosure of identifiable genetic information may only be used for the purpose of providing medical care to patients or conducting research that has been approved by an institutional review board established in accordance with federal law.

With respect to these requirements, the Insurance Commissioner may take specified enforcement actions, including the (1) denial, refusal to renew, suspension, and revocation of an insurer's certificate of authority; (2) sending and enforcement of cease-and-desist orders; and (3) ordering of an insurer to accept a risk. Other insurer requirements that prohibit discriminatory underwriting practices also apply relating to the use of genetic testing and information.

Genetic Information and Commercial Law

Chapter 501 of 2022 established the Genetic Information Privacy Act to regulate the use of genetic data by direct-to-consumer genetic testing companies. Broadly speaking, the Act requires any such company to (1) provide consumers with information regarding the company's policies and procedures; (2) obtain specified types of consent from the consumer prior to collecting, using, or disclosing the consumer's genetic data; and (3) develop and implement policies and procedures to protect genetic data. A violation of the Act is considered an unfair, abusive, or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA's civil and criminal penalty provisions.

State Revenues: Title 6 of the Insurance Article imposes a 2% premium tax on each authorized insurance company, surplus lines broker, or unauthorized insurance company that sells, or an individual who independently procures, any type of insurance coverage upon a risk that is located in the State. Revenues accrue to the general fund.

To the extent that the bill affects premium rates charged by life, long-term care, and disability insurers, general funds may be affected. However, it is unclear at this time what effect, if any, the bill will have on these premiums and, therefore, any such impact cannot be reliably predicted or estimated.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See SB 212 and HB 155 of 2023.

Designated Cross File: None.

Information Source(s): Maryland Insurance Administration; Department of Legislative Services

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km/jc

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