

Department of Legislative Services
 Maryland General Assembly
 2023 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 212 (Senator Klausmeier)
 Finance

Genetic Testing - Prohibitions on Disability, Life, and Long-Term Care Insurance and Educational Materials (Genetic Testing Protection Act of 2023)

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 against an applicant or insured related to genetic testing. Existing enforcement authority for the Insurance Commissioner and prohibitions against discrimination in underwriting are expressly applied for the enforcement of the bill. By April 1, 2024, the Maryland Department of Health (MDH) must review and update materials related to genetic testing, as specified, in order to educate the general public.

Fiscal Summary

State Effect: MDH general fund expenditures increase by \$100,000 in FY 2024 only for contractual expenses to develop and disseminate materials related to required genetic testing. Minimal special fund revenue increase for the Maryland Insurance Administration from the \$125 rate and form filing fee in FY 2024; review of additional filings can be handled with existing resources. General fund revenues may be affected (not shown below), as discussed below.

(in dollars)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
SF Revenue	-	\$0	\$0	\$0	\$0
GF Expenditure	\$100,000	\$0	\$0	\$0	\$0
Net Effect	(\$100,000)	\$0	\$0	\$0	\$0

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

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

Small Business Effect: None.

Analysis

Bill Summary: 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 genetic testing;
- 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 enforce the requirements of the bill using existing enforcement powers that allow the Commissioner to (1) deny, refuse to renew, suspend, and revoke an insurer's certificate of authority; (2) send and enforce cease and desist orders; and (3) order an insurer to accept a risk.

The bill also expressly prohibits an insurer affected by the bill from taking specified discriminatory actions when underwriting policies by applying existing prohibitions. For example, an insurer or insurance producer may not cancel or refuse to underwrite a policy based wholly or partly on race, color, creed, sex, or blindness of an applicant or policyholder or for any arbitrary, capricious, or unfairly discriminatory reason.

By April 1, 2024, MDH must review and update materials relating to genetic testing in order to educate the public on the benefits of genetic testing and the impact of genetic testing on access to life insurance, disability insurance, and long-term care insurance policies and contracts. The update must include the prohibitions established by the bill and, if applicable, updates to (1) public service announcements previously released by MDH; (2) publicly accessible websites maintained by MDH that contain information and resources regarding genetic testing; and (3) other media as determined appropriate by MDH.

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 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 Expenditures: MDH advises that it does not currently provide public information relating to genetic testing and does not have any regulatory authority over genetic testing. Regulation and dissemination of information about genetic testing generally occurs at the federal level. MDH's Office of Genetics and People with Special Health Care Needs is not directly involved in the type of genetic testing being addressed by the bill. Instead, the office focuses on programs and information related to newborn metabolic screening, birth defects, sickle cell disease, and congenital heart disease and ensures children and families are referred to genetic specialists and experts as necessary and appropriate.

As such, MDH does not have the staff or expertise necessary to develop, review, or update any material related to genetic testing in the manner required by the bill. Instead, MDH anticipates engaging contractual assistance in fiscal 2024 only to meet the bill's requirements at a total cost of approximately \$100,000 in general funds.

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

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 155 (Delegate Kipke) - Health and Government Operations.

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

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Analysis by: Richard L. Duncan

Direct Inquiries to:
(410) 946-5510
(301) 970-5510