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## Will Florida's DNA Privacy Law Start a Trend?

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### New Florida Law Expands Privacy Protections of Genetic Testing to Life and Disability Insurance:

Advances in genetic testing and the advent of commercially available testing kits, such as 23andMe and Ancestry DNA, has led to a steep rise in the popularity of such tests. This dramatic increase in genetic testing over the last decade has also brought with it concerns about the use of personal genetic information by third parties. Specifically, a concern exists that insurers may discriminate against individuals who have genetic markers indicating a heightened risk of developing certain diseases or health conditions. A new Florida bill (HB 1189) went into effect July 1, 2020, that expands the Florida privacy protections of genetic testing to life, disability, and long-term care insurers.

Federal and Florida law already protect genetic information from being used against people for health insurance coverage, premium, and underwriting decisions. Specifically, the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA") prohibits health insurers from making coverage decisions solely based on personal genetic information. Also, the federal Genetic Information Nondiscrimination Act of 2008 ("GINA"), further prevented health insurers from using genetic information in the underwriting process and in the setting of premiums. Similarly, prior to HB 1189 going into effect earlier this month, Section 627.4301 Florida Statutes already prohibited health insurers from considering genetic information, both when issuing insurance policies and when setting applicable premium rates.



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Such life and long-term care insurers can, however, access an individual's medical records and genetic information from those records that are a part of a diagnosis. The diagnosis in the medical records can be considered for insurance coverage, even if the diagnosis resulted from a genetic test. But the key is that the insurers must get this information from a bona fide medical diagnosis in a medical record and not from a third-party genetic test (like 23andMe or AcestorDNA).

Nonetheless, this is the first law of its kind in the country to protect an individual's genetic testing from a coverage, underwriting, or other decision from a life, disability, or long-term care insurer. The Florida law changes will appear in an amended version of Section 627.4301 Florida Statutes.

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