

REFERENCE TITLE: genetic testing information; confidentiality; exceptions

State of Arizona
House of Representatives
Fifty-third Legislature
Second Regular Session
2018

HB 2450

Introduced by
Representative Udall

AN ACT

AMENDING SECTIONS 12-2802, 20-448 AND 20-448.02, ARIZONA REVISED STATUTES;
RELATING TO GENETIC TESTING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 12-2802, Arizona Revised Statutes, is amended to
3 read:
4 12-2802. Confidentiality of genetic testing results:
5 disclosure
6 A. Except as otherwise provided in this article, genetic testing
7 and information derived from genetic testing are confidential and
8 considered privileged to the person tested and shall be released only to:
9 1. The person tested.
10 2. Any person who is specifically authorized in writing by the
11 person tested or by that person's health care decision maker to receive
12 this information.
13 3. The health care decision maker of the person tested.
14 4. A researcher for medical research or public health purposes only
15 if the research is conducted pursuant to applicable federal or state laws
16 and regulations governing clinical and biological research or if the
17 identity of the individual providing the sample is not disclosed to the
18 person collecting and conducting the research.
19 5. A third person if approved by a human subjects review committee
20 or a human ethics committee, with respect to persons who are subject to an
21 Arizona cancer registry.
22 ~~6. An authorized agent or employee of a health care provider if all~~
23 ~~of the following are true:~~
24 ~~(a) The health care provider performs the test or is authorized to~~
25 ~~obtain the test results by the person tested for the purposes of genetic~~
26 ~~counseling or treatment.~~
27 ~~(b) The agent or employee provides patient care, treatment or~~
28 ~~counseling.~~
29 ~~(c) The agent or employee needs to know the information in order to~~
30 ~~conduct the test or provide patient care, treatment or counseling.~~
31 **6. A HEALTH CARE PROVIDER WHO IS PROVIDING CARE TO THE PERSON**
32 **TESTED AND AN AGENT OR EMPLOYEE OF THE HEALTH CARE PROVIDER.**
33 7. A health care provider that procures, processes, distributes or
34 uses:
35 (a) A human body part from a deceased person with respect to
36 medical information regarding that person.
37 (b) Semen or ova for the purpose of artificial insemination.
38 8. A health care provider to conduct utilization review, peer
39 review and quality assurance pursuant to section 36-441, 36-445, 36-2402
40 or 36-2917.
41 9. The authorized agent of a federal, state or county health
42 department to conduct activities specifically authorized pursuant to the
43 laws of this state for the birth defects registry, children's
44 rehabilitative services, newborn screening and sickle cell diagnosis and

1 treatment programs and chronic, environmentally provoked and infectious
2 disease programs.

3 10. To obtain legal advice, the legal representative of a health
4 care provider OR CLINICAL LABORATORY that is in possession of the medical
5 record.

6 ~~11. A health care provider that assumes the responsibility to
7 provide care for, or consultation to, the patient from another health care
8 provider that had access to the patient's genetic records.~~

9 11. A PERSON OR ENTITY THAT PROVIDES SERVICES TO A HEALTH CARE
10 PROVIDER OR CLINICAL LABORATORY IF THE HEALTH CARE PROVIDER OR CLINICAL
11 LABORATORY HAS AN AGREEMENT REQUIRING THE PERSON OR ENTITY TO PROTECT THE
12 CONFIDENTIALITY OF THE GENETIC TESTING AND INFORMATION AND AS REQUIRED BY
13 THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 PRIVACY
14 STANDARDS (45 CODE OF FEDERAL REGULATIONS PART 160 AND PART 164,
15 SUBPART E).

16 12. A STATEWIDE HEALTH INFORMATION EXCHANGE.

17 13. THE HEALTH INSURANCE CARRIER OF THE PERSON TESTED.

18 14. A NATIONALLY RECOGNIZED ACCREDITATION ORGANIZATION.

19 15. A HEALTH PROFESSIONAL LICENSING BOARD IN THIS STATE.

20 16. AN ENTITY THAT IS RESPONSIBLE FOR THE PAYMENT OF A HEALTH CARE
21 PROVIDER'S CHARGES AND THAT USES THE INFORMATION ONLY FOR THE PURPOSE OF
22 THE PAYMENT OF THOSE CHARGES.

23 B. A person shall not disclose or be compelled to disclose the
24 identity of any person on whom a genetic test is performed or the results
25 of a genetic test in a manner that allows identification of the person
26 tested except to the persons specified in the circumstances set forth in
27 subsection A of this section.

28 C. If genetic testing information is subpoenaed, a health care
29 provider shall respond pursuant to section 12-2294.01, subsection E. In
30 determining whether to order production of the genetic testing
31 information, the court shall take all steps necessary to prevent the
32 disclosure or dissemination of that information.

33 D. Except as provided in this section, chapter 13, article 7.1 of
34 this title does not apply to genetic testing information that is contained
35 within a patient's medical record.

36 E. Following the death of a person who had genetic testing
37 performed, the release of the testing information is governed by section
38 12-2294, subsection D, except that the person may deny, release or limit
39 release of the genetic testing results by adopting a provision in a
40 testamentary document.

41 F. Except as specifically provided in this article, a person to
42 whom test results have been disclosed pursuant to this article, other than
43 the person tested, shall not disclose the test results to any other
44 person.

1 G. A health care provider and the provider's agents and employees
2 that act in good faith and that comply with this article are not subject
3 to civil liability. The good faith of a health care provider that
4 complies with this article is presumed. The presumption may be rebutted
5 by a preponderance of the evidence.

6 H. This article does not limit the effect of title 20 provisions
7 governing the confidentiality and use of genetic testing information.

8 Sec. 2. Section 20-448, Arizona Revised Statutes, is amended to
9 read:

10 20-448. Unfair discrimination: definitions

11 A. A person shall not make or permit any unfair discrimination
12 between individuals of the same class and equal expectation of life in the
13 rates charged for any contract of life insurance or of life annuity or in
14 the dividends or other benefits payable or in any other of the terms and
15 conditions of the contract.

16 B. A person shall not make or permit any unfair discrimination
17 respecting hemophiliacs or between individuals of the same class and of
18 essentially the same hazard in the amount of premium, policy fees or rates
19 charged for any policy or contract of disability insurance or in the
20 benefits payable or in any of the terms or conditions of the contract, or
21 in any other manner whatever. The provisions of this subsection regarding
22 hemophiliacs do not apply to any policy or subscription contract ~~which~~
23 THAT provides only benefits for specific diseases or for accidental
24 injuries or ~~which~~ THAT provides only indemnity for blood transfusion
25 services or replacement of whole blood products, fractions or derivatives.

26 C. As to kinds of insurance other than life and disability, a
27 person shall not make or permit any unfair discrimination in favor of
28 particular persons or between insureds or subjects of insurance having
29 substantially like insuring, risk and exposure factors, or expense
30 elements, in the terms or conditions of any insurance contract, or in the
31 rate or amount of premium charged.

32 D. An insurer shall not refuse to consider an application for life
33 or disability insurance on the basis of a genetic condition, developmental
34 delay or developmental disability.

35 E. The rejection of an application or the determining of rates,
36 terms or conditions of a life or disability insurance contract on the
37 basis of a genetic condition, developmental delay or developmental
38 disability constitutes unfair discrimination, unless the applicant's
39 medical condition and history and either claims experience or actuarial
40 projections establish that substantial differences in claims are likely to
41 result from the genetic condition, developmental delay or developmental
42 disability.

43 F. In addition to the provisions in subsection E of this section,
44 the rejection of an application or the determination of rates, terms or
45 conditions of ~~a disability~~ AN INDIVIDUAL OR GROUP HEALTH insurance POLICY

1 OR contract on the basis of a genetic condition constitutes unfair
2 discrimination in the absence of a diagnosis of the condition related to
3 information obtained as a result of a genetic test.

4 G. An insurer that offers life, disability, property or liability
5 insurance contracts shall not deny a claim incurred or deny, refuse,
6 refuse to renew, restrict, cancel, exclude or limit coverage or charge a
7 different rate for the same coverage solely on the basis that the insured
8 or proposed insured is or has been a victim of domestic violence or is an
9 entity or individual that provides counseling, shelter, protection or
10 other services to victims of domestic violence. If an insurer that offers
11 life, disability, property or liability insurance contracts denies a claim
12 incurred or denies, refuses, refuses to renew, restricts, cancels,
13 excludes or limits coverage or charges a different rate for the same
14 coverage on the basis of a mental or physical condition and the insured or
15 the proposed insured is or has been a victim of domestic violence, the
16 insurer shall submit a written explanation to the insured or proposed
17 insured of the reasons for the insurer's actions, in accordance with
18 section 20-2110. The fact that an insured or proposed insured is or has
19 been the victim of domestic violence is not a mental or physical
20 condition. ~~Nothing contained in~~ This subsection is NOT intended to
21 provide any private right or cause of action to or on behalf of any
22 applicant or insured. It is the specific intent of this subsection to
23 provide solely an administrative remedy to the director for any violation
24 of this section. Nothing in this subsection prevents an insurer from
25 refusing to issue a life insurance policy insuring a person who has been
26 the victim of domestic violence if either of the following is true:

27 1. The family or household member who commits the act of domestic
28 violence is the applicant for or prospective owner of the policy or would
29 be the beneficiary of the policy and any of the following is true:

30 (a) The applicant or prospective beneficiary of the policy is
31 known, on the basis of police or court records, to have committed an act
32 of domestic violence.

33 (b) The insurer has knowledge of an arrest or conviction for a
34 domestic violence related offense by the family or household member.

35 (c) The insurance company has other reasonable grounds to believe,
36 and those grounds are corroborated, that the applicant or proposed
37 beneficiary of a policy is a family or household member committing acts of
38 domestic violence.

39 2. The applicant or prospective owner of the policy lacks an
40 insurable interest in the insured.

41 H. Nothing in subsection G of this section prevents an insurer
42 that:

43 1. Offers life or disability insurance contracts from underwriting
44 coverage on the basis of an insured's or proposed insured's mental or
45 physical condition if the underwriting:

1 (a) Does not consider whether or not the mental or physical
2 condition was caused by an act of domestic violence.

3 (b) Is the same for an insured or proposed insured who is not the
4 victim of domestic violence as it is for an insured or proposed insured
5 who is the victim of domestic violence.

6 (c) Does not violate any other rule or law.

7 2. Offers property or liability insurance contracts from
8 underwriting coverage on the basis of the insured's claims history or
9 characteristics of the insured's property and using rating criteria
10 consistent with section 20-384.

11 I. Any determination made pursuant to section 20-2537 by the
12 external independent review organization shall not be considered in
13 connection with the evaluation of whether any person subject to this
14 article has complied with this section.

15 J. A property or liability insurer may exclude coverage for losses
16 caused by an insured's intentional or fraudulent act. The exclusion shall
17 not deny an insured's otherwise covered property loss if the property loss
18 is caused by an act of domestic violence by another insured under the
19 policy and the insured who claims the property loss cooperates in any
20 investigation relating to the loss and did not cooperate in or contribute
21 to the creation of the property loss. The insurer may apply reasonable
22 standards of proof for claims filed under this subsection. The insurer
23 may limit the payment to the insured's insurable interest in the property
24 minus any payment made to any mortgagee or other party with a secured
25 interest in the property. This subsection does not require an insurer to
26 pay any amount that is more than the amount of the loss or property
27 coverage limits. An insurer who pays a claim under this subsection has
28 the right of subrogation against any person except the victim of the
29 domestic violence.

30 K. All insurers shall adopt and adhere to written policies that are
31 consistent with chapter 11 of this title and that specify the procedures
32 to be followed by employees, contractors, producers, agents and brokers to
33 ensure the privacy of and to help protect the safety of a victim of
34 domestic violence when taking an application, investigating a claim,
35 pursuing subrogation or taking any other action relating to a policy or
36 claim involving a victim of domestic violence. Insurers shall distribute
37 the written policies to employees, contractors, producers, agents and
38 brokers who have access to personal or privileged information regarding
39 domestic violence.

40 L. For the purposes of this section:

41 1. "Developmental delay" means a delay of at least one and one-half
42 standard deviations from the norm.

43 2. "Developmental disability" has the same meaning prescribed in
44 section 36-551.

1 3. "Domestic violence" means any act that is a dangerous crime
2 against children as defined in section 13-705 or an offense defined in
3 section 13-1201 through 13-1204, 13-1302 through 13-1304, 13-1502 through
4 13-1504 or 13-1602, section 13-2810, section 13-2904, subsection A,
5 paragraph 1, 2, 3 or 6, section 13-2916 or section 13-2921, 13-2921.01,
6 13-2923 or 13-3623, if any of the following applies:

7 (a) The relationship between the victim and the defendant is one of
8 marriage or former marriage or of persons residing or having resided in
9 the same household.

10 (b) The victim and the defendant have a child in common.

11 (c) The victim or the defendant is pregnant by the other party.

12 (d) The victim is related to the defendant or the defendant's
13 spouse by blood or court order as a parent, grandparent, child,
14 grandchild, brother or sister, or by marriage as a parent-in-law,
15 grandparent-in-law, stepparent, step-grandparent, stepchild,
16 step-grandchild, brother-in-law or sister-in-law.

17 (e) The victim is a child who resides or has resided in the same
18 household as the defendant and is related by blood to a former spouse of
19 the defendant or to a person who resides or has resided in the same
20 household as the defendant.

21 4. "Gene products" means gene fragments, nucleic acids or proteins
22 derived from deoxyribonucleic acids that would be a reflection of or
23 indicate DNA sequence information.

24 5. "Genetic condition" means a specific chromosomal or single-gene
25 genetic condition.

26 6. "Genetic test" means an analysis of an individual's DNA, gene
27 products or chromosomes that indicates a propensity for or susceptibility
28 to illness, disease, impairment or other disorders, whether physical or
29 mental, or that demonstrates genetic or chromosomal damage due to
30 environmental factors, or carrier status for a disease or disorder.

31 Sec. 3. Section 20-448.02, Arizona Revised Statutes, is amended to
32 read:

33 20-448.02. Genetic testing; informed consent; definitions

34 A. Except as otherwise specifically authorized or required by this
35 state or by federal law, a person shall not order or require the
36 performance of a genetic test without first receiving the specific written
37 informed consent of the subject of the test who has the capacity to
38 consent or, if the person subject to the test lacks the capacity to
39 consent, of a person authorized pursuant to law to consent for that
40 person. Written consent shall be in a form prescribed by the director.
41 **EXCEPT AS AUTHORIZED IN SECTION 12-2802**, the results of a genetic test
42 performed are privileged and confidential and may not be released to any
43 party without the express consent of the subject of the test or the person
44 authorized pursuant to law to consent for that person.

1 B. For the purposes of this section:

2 1. "Gene products" means gene fragments, nucleic acids or proteins
3 derived from deoxyribonucleic acids that would be a reflection of or
4 indicate DNA sequence information.

5 2. "Genetic test" means an analysis of an individual's DNA, gene
6 products or chromosomes that indicates a propensity for or susceptibility
7 to illness, disease, impairment or other disorders, whether physical or
8 mental, or that demonstrates genetic or chromosomal damage due to
9 environmental factors, or carrier status for a disease or disorder.