



Home	Bill Information	California Law	Publications	Other Resources	My Subscriptions	My Favorites
------	------------------	----------------	--------------	-----------------	------------------	--------------

Code: Section:

[Up^](#) [Add To My Favorites](#)

INSURANCE CODE - INS

DIVISION 2. CLASSES OF INSURANCE [1880 - 12880.8] (*Division 2 enacted by Stats. 1935, Ch. 145.*)

PART 2. LIFE AND DISABILITY INSURANCE [10110 - 11549] (*Part 2 enacted by Stats. 1935, Ch. 145.*)

CHAPTER 1. The Contract [10110 - 10198.10] (*Chapter 1 enacted by Stats. 1935, Ch. 145.*)

ARTICLE 2.6. Underwriting on the Basis of Test of Genetic Characteristics [10146 - 10149.1] (*Article 2.6 added by Stats. 1994, Ch. 761, Sec. 7.*)

10146. The purposes of this article are to establish standards regarding unfair discrimination among individuals of the same class in the underwriting of life or disability income insurance on the basis of tests of a person's genetic characteristics; to establish minimum standards for determining insurability which are sufficiently reliable to be used for life and disability income insurance risk classification and underwriting purposes; to require the maintenance of strict confidentiality of personal information obtained through a test of a person's genetic characteristics; and to require informed consent before insurers underwrite on the basis of a test of a person's genetic characteristics. This article and Sections 10140 and 10143 shall constitute the exclusive requirements for insurers' practices relating to genetic characteristics or to tests thereof.

(*Added by Stats. 1994, Ch. 761, Sec. 7. Effective January 1, 1995.*)

10147. As used in this article:

- (a) "Disability income insurance" means insurance against loss of occupational earning capacity arising from injury, sickness, or disablement, and includes insurance which provides benefits for overhead expenses of a business or profession when the insured becomes disabled.
- (b) "Genetic characteristics" means any scientifically or medically identifiable gene or chromosome, or alteration thereof, that is known to be a cause of a disease or disorder, or that is determined to be associated with a statistically increased risk of development of a disease or disorder, and that is presently not associated with any symptoms of any disease or disorder.
- (c) "Life or disability income insurer" means an insurer licensed to transact life insurance or disability income insurance in this state or a fraternal benefit society licensed in this state.
- (d) "Policy" means (1) a life insurance policy or a disability income insurance policy delivered in this state, or (2) a certificate of life insurance benefits or disability income insurance benefits, issued under a group life or disability income insurance policy and delivered in this state by a life or disability income insurer or a fraternal benefits society, regardless of the location of the group master policy.
- (e) "Test of a person's genetic characteristics" means a laboratory test which is generally accepted in the scientific and medical communities for the determination of the presence or absence of genetic characteristics.

(*Amended by Stats. 1999, Ch. 311, Sec. 5. Effective January 1, 2000.*)

10148. No insurer shall require a test for the presence of a genetic characteristic for the purpose of determining insurability other than for those policies that are contingent on review or testing for other diseases or medical conditions. In those cases, the test shall be done in accordance with the informed consent and privacy protection provisions of this article and Article 6.6 (commencing with Section 791) of Chapter 1 of Part 2 of Division 1. Notwithstanding any other provision of law, this constitutes the exclusive requirements for informed consent and privacy protection for that testing.

(a) An insurer that requests an applicant to take a genetic characteristic test shall obtain the applicant's written informed consent for the test. Written informed consent shall include a description of the test to be performed, including its purpose, potential uses, and limitations, the meaning of its results, procedures for notifying the applicant of the results, and the right to confidential treatment of the results.

(b) The insurer shall notify an applicant of a test result by notifying the applicant or the applicant's designated physician. If the applicant tested has not given written consent authorizing a physician to receive the test results, the applicant shall be urged, at the

time the applicant is informed of the test results, to contact a health care professional.

(c) The commissioner shall develop and adopt standardized language for the informed consent disclosure form required by this section to be given to any applicant for life or disability income insurance who takes a test for a genetic characteristic.

(d) A life or disability income insurer shall not require a person to undergo a test of the person's genetic characteristics unless the cost of the test is paid by the insurer.

(e) No policy shall limit benefits otherwise payable if loss is caused or contributed to by the presence or absence of genetic characteristics, except to the extent and in the same fashion as the insurer limits coverage for loss caused or contributed to by other medical conditions presenting an increased degree of risk.

(f) Nothing in this chapter shall limit an insurer's right to decline an application or enrollment request for a life or disability income insurance policy, charge a higher rate or premium for such a policy, or place a limitation on coverage under such a policy, on the basis of manifestations of any disease or disorder.

(g) No discrimination shall be made in the fees or commissions of agents or brokers writing or renewing a life or disability income policy on the basis of a test of that person's genetic characteristics.

(Amended by Stats. 1998, Ch. 521, Sec. 8. Effective January 1, 1999.)

10149. (a) All underwriting activities undertaken by insurers pursuant to this article shall be subject to all applicable provisions of Article 6.6 (commencing with Section 791) of Chapter 1 of Part 2 of Division 1.

(b) No life or disability income insurer shall require a genetic characteristic test if the results of the test would be used exclusively or nonexclusively for the purpose of determining eligibility for hospital, medical, or surgical insurance coverage or eligibility for coverage under a nonprofit hospital service plan or health care service plan.

(Added by Stats. 1994, Ch. 761, Sec. 7. Effective January 1, 1995.)

10149.1. (a) This section shall apply to the disclosure of the results of a test for a genetic characteristic requested by an insurer pursuant to this article.

(b) Any person who negligently discloses results of a test for a genetic characteristic to any third party, in a manner which identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization, as described in subdivision (g), or except as provided in this article or in Sections 1603.1 and 1603.3 of the Health and Safety Code, shall be assessed a civil penalty in an amount not to exceed one thousand dollars (\$1,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(c) Any person who willfully discloses the results of a test for a genetic characteristic to any third party, in a manner which identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization, as described in subdivision (g), or except as provided in this article or in Sections 1603.1 and 1603.3 of the Health and Safety Code, shall be assessed a civil penalty in an amount not less than one thousand dollars (\$1,000) and no more than five thousand dollars (\$5,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(d) Any person who willfully or negligently discloses the results of a test for a genetic characteristic to a third party, in a manner which identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization, as described in subdivision (g), or except as provided in this article or in Sections 1603.1 and 1603.3 of the Health and Safety Code, which results in economic, bodily, or emotional harm to the subject of the test, is guilty of a misdemeanor punishable by imprisonment in a county jail for a period not to exceed one year, by a fine of not to exceed ten thousand dollars (\$10,000), or by both that fine and imprisonment.

(e) Any person who commits any act described in subdivision (b) or (c) shall be liable to the subject for all actual damages, including damages for economic, bodily, or emotional harm which is proximately caused by the act.

(f) Each disclosure made in violation of this section is a separate and actionable offense.

(g) The applicant's "written authorization," as used in this section, applies only to the disclosure of test results by a person responsible for the care and treatment of the person subject to the test. Written authorization is required for each separate disclosure of the test results, and shall include to whom the disclosure would be made.

(Added by Stats. 1994, Ch. 761, Sec. 7. Effective January 1, 1995.)