

105TH CONGRESS
1ST SESSION

H. R. 2590

To require life and disability insurers to disclose an insurance applicant's medical test results to the applicant, unless the applicant specifically declines to receive the results, and otherwise to restrict the disclosure of such results by such insurers.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 1, 1997

Mr. DEFAZIO (for himself, Mr. DELLUMS, Mr. EVANS, Mr. FROST, Mr. GEJDE-
ENSON, Mr. GREEN, Mr. LAFALCE, Mr. PARKER, Mr. SCHUMER, Ms.
SLAUGHTER, and Mr. STARK) introduced the following bill; which was re-
ferred to the Committee on Commerce

A BILL

To require life and disability insurers to disclose an insurance applicant's medical test results to the applicant, unless the applicant specifically declines to receive the results, and otherwise to restrict the disclosure of such results by such insurers.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. REQUIREMENT TO DISCLOSE TO INSURANCE**
2 **APPLICANTS CERTAIN MEDICAL TEST RE-**
3 **SULTS.**

4 (a) IN GENERAL.—Except as provided in subsections
5 (c) and (d), a life or disability insurer who requires, as
6 a condition for the sale of a covered insurance product,
7 that an applicant for the purchase of the product submit
8 to an examination or test by a physician, health profes-
9 sional, or medical laboratory—

10 (1) shall require the physician, health profes-
11 sional, or laboratory to provide the results to the in-
12 surer in the form of a written report containing the
13 findings of the physician, professional, or laboratory,
14 including the results of all tests, diagnoses, and con-
15 clusions made; and

16 (2) shall mail, not later than 30 days after the
17 date on which the insurer receives such report, the
18 report to the applicant at an address provided for
19 this purpose by the applicant.

20 (b) ABNORMAL FINDING.—In any case in which a life
21 or disability insurer mails a report to an applicant under
22 subsection (a) that contains a finding of abnormality or
23 irregularity with respect to the health or condition of the
24 applicant, the insurer shall include with the report a docu-
25 ment that—

1 (1) highlights the abnormal or irregular finding
2 in language that is understandable to a person of av-
3 erage intelligence with no medical training; and

4 (2) advises the applicant to consult with a suit-
5 able health professional for further explanation and
6 appropriate follow-up.

7 (c) ELECTION TO RECEIVE RESULTS THROUGH PHY-
8 SICIAN.—An applicant described in subsection (a) may
9 elect to have the report described in such subsection, and
10 the document described in subsection (b), mailed to a phy-
11 sician of the applicant's choice designated by the applicant
12 for such purpose, in lieu of having the report and docu-
13 ment mailed to the applicant. The election shall be effec-
14 tive in any case where the applicant, before the date of
15 the examination or test, submits to the insurer an election
16 form described in subsection (e)(1) that includes—

17 (1) a check-off box, marked by hand by the ap-
18 plicant, showing the applicant's election to have the
19 report and document mailed to such physician;

20 (2) the applicant's signature; and

21 (3) the date on which the form was completed
22 by the applicant.

23 (d) WAIVER BY APPLICANT.—Subsections (a) and (b)
24 shall not apply where the applicant, before the date of the
25 examination or test, declines to receive the results by sub-

1 mitting to the insurer a waiver form described in sub-
2 section (e)(1) that includes—

3 (1) a check-off box, marked by hand by the ap-
4 plicant, showing the applicant's choice to waive the
5 applicant's right to receive any reports under sub-
6 section (a);

7 (2) the applicant's signature; and

8 (3) the date on which the form was completed
9 by the applicant.

10 (e) REQUIREMENTS RELATING TO FORMS.—

11 (1) REQUIREMENT TO SUPPLY FORMS.—A life
12 or disability insurer described in subsection (a) shall
13 furnish to an applicant described in such subsection
14 an election form, sufficient for purposes of sub-
15 section (c), and a waiver form, sufficient for pur-
16 poses of subsection (d), at the same time the insurer
17 furnishes to the applicant the application for sale of
18 the covered product. The forms shall be distinct
19 from, and not a part of, such application.

20 (2) COPY.—A life or disability insurer described
21 in subsection (a) shall furnish to an applicant de-
22 scribed in such subsection a copy of an election form
23 or a waiver form submitted to the insurer by the ap-
24 plicant upon the insurer's receipt of the form.

1 (3) REVOCATION.—An election under sub-
2 section (c), or a waiver under subsection (d), may be
3 revoked by the applicant at any time, through a
4 written or oral notification to the life or disability in-
5 surer.

6 **SEC. 2. PROHIBITION ON CERTAIN DISCLOSURES OF EXAM-**
7 **INATION RESULTS.**

8 A life or disability insurer who requires, as a condi-
9 tion for the sale of a covered insurance product, that an
10 applicant for the purchase of the product submit to an
11 examination or test by a physician, health professional, or
12 medical laboratory may not disclose to any other person,
13 in any form, the results of such examination or test, ex-
14 cept—

15 (1) as provided in section 1;

16 (2) pursuant to a valid and fully executed writ-
17 ten authorization for such disclosure—

18 (A) during the period specified by the au-
19 thorization, in the case of an authorization that
20 permits the disclosure to be made only during
21 a period that is shorter than the 2-year period
22 beginning on the date the authorization is exe-
23 cuted by the applicant; or

1 (B) during 2-year period beginning on the
2 date the authorization is executed by the appli-
3 cant, in the case of any other authorization;

4 (3) pursuant to a court order, subpoena, war-
5 rant, or search warrant, for use by a law enforce-
6 ment agency in an official law enforcement inves-
7 tigation or proceeding inquiring into a violation of
8 any civil or criminal law, and where such disclosure
9 is expressly required by an applicable law other than
10 this Act;

11 (4) where the disclosure is made to a public
12 health authority and is expressly required by an ap-
13 plicable law other than this Act.

14 **SEC. 3. CIVIL ACTION BY AGGRIEVED PERSON.**

15 (a) IN GENERAL.—Any person who is aggrieved by
16 a violation of this Act by a life or disability insurer may
17 commence a civil action against the insurer in an appro-
18 priate State court or district court of the United States.

19 (b) RELIEF.—

20 (1) IN GENERAL.—In an action under this sec-
21 tion, if the court finds that the defendant has failed
22 to comply with this Act, the aggrieved person may
23 recover—

24 (A) statutory damages in an amount equal
25 to \$10,000 for each such violation;

1 (B) compensatory damages; and

2 (C) punitive damages.

3 (2) ATTORNEY’S FEES.—In an action under
4 this section, the court, in its discretion, may allow
5 a prevailing plaintiff, other than the United States,
6 a reasonable attorney’s fee (including expert fee) as
7 part of the costs, and the United States shall be lia-
8 ble for costs the same as a private person.

9 **SEC. 4. INAPPLICABILITY OF MCCARRAN-FERGUSON ACT.**

10 For purposes of section 2(b) of the Act of March 9,
11 1945 (15 U.S.C. 1012(b); commonly known as the
12 McCarran-Ferguson Act), this Act shall be considered to
13 specifically relate to the business of insurance.

14 **SEC. 5. REGULATIONS.**

15 The Secretary of Health and Human Services may
16 issue regulations to carry out this Act.

17 **SEC. 6. DEFINITIONS.**

18 As used in this Act:

19 (1) APPLICANT.—The term “applicant” means
20 an individual whose death or disability will be, or is,
21 the subject of a covered insurance product, upon the
22 acceptance by the life or disability insurer selling the
23 product of the application for the purchase of the
24 product.

1 (2) COVERED INSURANCE PRODUCT.—The term
2 “covered insurance product” means—

3 (A) a life insurance policy or contract, or
4 benefits under such a policy or contract; or

5 (B) a disability insurance policy or con-
6 tract, or benefits under such a policy or con-
7 tract.

8 (3) DISCLOSE.—The term “disclose”, means to
9 release, transfer, provide access to, or otherwise di-
10 vulge the information to any person other than an
11 individual who is the subject of the information.
12 Such term includes the placement of information
13 into a computerized data base, networked computer
14 system, or any other electronic or magnetic data sys-
15 tem, that more than one person may access by any
16 means.

17 (4) LIFE OR DISABILITY INSURER.—The term
18 “life or disability insurer” means—

19 (A) a person doing business in interstate
20 commerce who is licensed or certified by a State
21 to provide a covered insurance product; or

22 (B) a person who acts as an agent of a
23 person described in subparagraph (A) with re-
24 spect to the sale of a covered insurance product.

1 **SEC. 7. EFFECTIVE DATE.**

2 This Act shall take effect on July 1, 1998.

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