

State of Arizona  
Senate  
Fifty-fourth Legislature  
First Regular Session  
2019

**CHAPTER 250**  
**SENATE BILL 1297**

AN ACT

AMENDING SECTIONS 12-2802 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 AS  
9 AUTHORIZED BY STATE OR FEDERAL LAW, INCLUDING THE HEALTH INSURANCE  
10 PORTABILITY AND ACCOUNTABILITY ACT PRIVACY STANDARDS (45 CODE OF FEDERAL  
11 REGULATIONS PART 160 AND PART 164, SUBPART E), OR to:

12 1. The person tested.

13 2. Any person who is specifically authorized in writing by the  
14 person tested or by that person's health care decision maker to receive  
15 this information.

16 3. The health care decision maker of the person tested.

17 4. A researcher for medical research or public health purposes only  
18 if the research is conducted pursuant to applicable federal or state laws  
19 and regulations governing clinical and biological research or if the  
20 identity of the individual providing the sample is not disclosed to the  
21 person collecting and conducting the research.

22 5. A third person if approved by a human subjects review committee  
23 or a human ethics committee, with respect to persons who are subject to an  
24 Arizona cancer registry.

25 ~~6. An authorized agent or employee of a health care provider if all~~  
26 ~~of the following are true:~~

27 ~~(a) The health care provider performs the test or is authorized to~~  
28 ~~obtain the test results by the person tested for the purposes of genetic~~  
29 ~~counseling or treatment.~~

30 ~~(b) The agent or employee provides patient care, treatment or~~  
31 ~~counseling.~~

32 ~~(c) The agent or employee needs to know the information in order to~~  
33 ~~conduct the test or provide patient care, treatment or counseling.~~

34 6. A HEALTH CARE PROVIDER WHO IS PROVIDING CARE TO THE PERSON  
35 TESTED AND AN AGENT OR EMPLOYEE OF THE HEALTH CARE PROVIDER.

36 7. A health care provider that procures, processes, distributes or  
37 uses:

38 (a) A human body part from a deceased person with respect to  
39 medical information regarding that person.

40 (b) Semen or ova for the purpose of artificial insemination.

41 8. A health care provider to conduct utilization review, peer  
42 review and quality assurance pursuant to section 36-441, 36-445, 36-2402  
43 or 36-2917.

1           9. The authorized agent of a federal, state or county health  
2 department to conduct activities specifically authorized pursuant to the  
3 laws of this state for the birth defects registry, children's  
4 rehabilitative services, newborn screening and sickle cell diagnosis and  
5 treatment programs and chronic, environmentally provoked and infectious  
6 disease programs.

7           10. To obtain legal advice, the legal representative of a health  
8 care provider **OR CLINICAL LABORATORY** that is in possession of the medical  
9 record.

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

13           **B. A PATHOLOGIST WHO IS LICENSED PURSUANT TO TITLE 32, CHAPTER 13**  
14 **OR 17 MAY ORDER AND PERFORM GENETIC TESTING FOR A PATIENT AND RECEIVE THE**  
15 **RESULTS OF THAT TESTING.**

16           ~~C.~~ C. A person shall not disclose or be compelled to disclose the  
17 identity of any person on whom a genetic test is performed or the results  
18 of a genetic test in a manner that allows identification of the person  
19 tested except to the persons specified in the circumstances set forth in  
20 subsection A of this section.

21           ~~D.~~ D. If genetic testing information is subpoenaed, a health care  
22 provider shall respond pursuant to section 12-2294.01, subsection E. In  
23 determining whether to order production of the genetic testing  
24 information, the court shall take all steps necessary to prevent the  
25 disclosure or dissemination of that information.

26           ~~E.~~ E. Except as provided in this section, chapter 13, article 7.1  
27 of this title does not apply to genetic testing information that is  
28 contained within a patient's medical record.

29           ~~F.~~ F. Following the death of a person who had genetic testing  
30 performed, the release of the testing information is governed by section  
31 12-2294, subsection D, except that the person may deny, release or limit  
32 release of the genetic testing results by adopting a provision in a  
33 testamentary document.

34           ~~F.~~ G. Except as specifically provided in this article, a person to  
35 whom test results have been disclosed pursuant to this article, other than  
36 the person tested, shall not disclose the test results to any other  
37 person.

38           ~~G.~~ H. A health care provider and the provider's agents and  
39 employees that act in good faith and that comply with this article are not  
40 subject to civil liability. The good faith of a health care provider that  
41 complies with this article is presumed. The presumption may be rebutted  
42 by a preponderance of the evidence.

43           ~~H.~~ I. This article does not limit the effect of title 20  
44 provisions governing the confidentiality and use of genetic testing  
45 information.

1           Sec. 2. Section 20-448.02, Arizona Revised Statutes, is amended to  
2 read:

3           20-448.02. Genetic testing; informed consent; definitions

4           A. Except as otherwise specifically authorized or required by this  
5 state or by federal law, a person shall not order or require the  
6 performance of a genetic test without first receiving the specific written  
7 informed consent of the subject of the test who has the capacity to  
8 consent or, if the person subject to the test lacks the capacity to  
9 consent, of a person authorized pursuant to law to consent for that  
10 person. Written consent shall be in a form prescribed by the director.  
11 **EXCEPT AS AUTHORIZED IN SECTION 12-2802**, the results of a genetic test  
12 performed are privileged and confidential and may not be released to any  
13 party without the express consent of the subject of the test or the person  
14 authorized pursuant to law to consent for that person.

15           B. For the purposes of this section:

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

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

APPROVED BY THE GOVERNOR MAY 22, 2019.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 22, 2019.