



**CHAPTER 760 PART III
MISCELLANEOUS PROVISIONS**

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CHAPTER 760 FLORIDA STATUTES | FLORIDA

TITLE: XLIV CIVIL RIGHTS

CHAPTER: 760 DISCRIMINATION IN THE TREATMENT OF...

PART: III MISCELLANEOUS PROVISIONS

SECTIONS: §760.40 through §760.60

NOTE: Entire Chapter



§760.40 FS | GENETIC TESTING; DEFINITIONS; EXPRESS CONSENT REQUIRED; CONFIDENTIALITY; NOTICE OF USE OF RESULTS

(1) As used in this section, the term:

(a) "DNA analysis" means the medical and biological examination and analysis of a person's DNA to identify the presence and composition of genes in that person's body. The term includes DNA typing and genetic testing.

(b) "DNA sample" means any human biological specimen from which DNA can be extracted or the DNA extracted from such specimen.

(c) "Exclusive property" means the right of the person whose DNA has been extracted or analyzed to exercise control over his or her DNA sample and any results of his or her DNA analysis with regard to the collection, use, retention, maintenance, disclosure, or destruction of such sample or analysis results.

(d) "Express consent" means authorization by the person whose DNA is to be extracted or analyzed, or such person's legal guardian or authorized representative, evidenced by an affirmative action demonstrating an intentional decision, after the person receives a clear and prominent disclosure regarding the manner of collection, use, retention, maintenance, or disclosure of a DNA sample or results of a DNA analysis for specified purposes. A single express consent may authorize every instance of a specified purpose or use.

(2) Except as provided in s. 817.5655, a person or entity may only perform DNA analysis with express consent. The results of such DNA analysis, whether held by a public or private entity, are the exclusive property of the person tested, are confidential, and may not be disclosed without express consent. Such information held by a public entity is exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(3) A person who performs DNA analysis or receives records, results, or findings of DNA analysis must provide the person tested with notice that the analysis was performed or that the information was received. The notice must state that, upon the request of the person tested, the information will be made available to his or her physician. The notice must



also state whether the information was used in any decision to grant or deny any insurance, employment, mortgage, loan, credit, or educational opportunity. If the information was used in any decision that resulted in a denial, the analysis must be repeated to verify the accuracy of the first analysis, and if the first analysis is found to be inaccurate, the denial must be reviewed.

History - (s. 1, ch. 92-101; s. 10, ch. 93-204; s. 1, ch. 94-90; s. 420, ch. 96-406; s. 1795, ch. 97-102; s. 15, ch. 98-251; s. 7, ch. 2001-127; s. 40, ch. 2005-39; s. 3, ch. 2009-190; s. 2, ch. 2021-216)



§760.50 FS | DISCRIMINATION ON THE BASIS OF AIDS, AIDS-RELATED COMPLEX, AND HIV PROHIBITED

(1) The Legislature finds and declares that persons infected or believed to be infected with human immunodeficiency virus have suffered and will continue to suffer irrational and scientifically unfounded discrimination. The Legislature further finds and declares that society itself is harmed by this discrimination, as otherwise able-bodied persons are deprived of the means of supporting themselves, providing for their own health care, housing themselves, and participating in the opportunities otherwise available to them in society. The Legislature further finds and declares that remedies are needed to correct these problems.

(2) Any person with or perceived as having acquired immune deficiency syndrome, acquired immune deficiency syndrome related complex, or human immunodeficiency virus shall have every protection made available to handicapped persons.

(3)

(a) No person may require an individual to take a human immunodeficiency virus-related test as a condition of hiring, promotion, or continued employment unless the absence of human immunodeficiency virus infection is a bona fide occupational qualification for the job in question.

(b) No person may fail or refuse to hire or discharge any individual, segregate or classify any individual in any way which would deprive or tend to deprive that individual of employment opportunities or adversely affect his or her status as an employee, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment on the basis of knowledge or belief that the individual has taken a human immunodeficiency virus test or the results or perceived results of such test unless the absence of human immunodeficiency virus infection is a bona fide occupational qualification of the job in question.

(c) A person who asserts that a bona fide occupational qualification exists for human immunodeficiency virus-related testing shall have the burden of proving that:



1. The human immunodeficiency virus-related test is necessary to ascertain whether an employee is currently able to perform in a reasonable manner the duties of the particular job or whether an employee will present a significant risk of transmitting human immunodeficiency virus infection to other persons in the course of normal work activities; and

2. There exists no means of reasonable accommodation short of requiring that the individual be free of human immunodeficiency virus infection.

(4)

(a) A person may not discriminate against an otherwise qualified individual in housing, public accommodations, or governmental services on the basis of the fact that such individual is, or is regarded as being, infected with human immunodeficiency virus.

(b) A person or other entity receiving or benefiting from state financial assistance may not discriminate against an otherwise qualified individual on the basis of the fact that such individual is, or is regarded as being, infected with human immunodeficiency virus.

(c) A person who asserts that an individual who is infected with human immunodeficiency virus is not otherwise qualified shall have the burden of proving that no reasonable accommodation can be made to prevent the likelihood that the individual will, under the circumstances involved, expose other individuals to a significant possibility of being infected with human immunodeficiency virus.

(d) A person may not fail or refuse to hire or discharge any individual, segregate or classify any individual in any way which would deprive or tend to deprive that individual of employment opportunities or adversely affect his or her status as an employee, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment on the basis of the fact that the individual is a licensed health care professional or health care



worker who treats or provides patient care to persons infected with human immunodeficiency virus.

(5) Every employer who provides or administers health insurance benefits or life insurance benefits to its employees shall maintain the confidentiality of information relating to the medical condition or status of any person covered by such insurance benefits. Such information in the possession of a public employer is exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. An employer shall be liable in damages to any person damaged by its failure to implement such a procedure.

(6)

(a) Any person aggrieved by a violation of this section shall have a right of action in the circuit court and may recover for each violation:

1. Against any person who violates a provision of this section, liquidated damages of \$1,000 or actual damages, whichever is greater.

2. Against any person who intentionally or recklessly violates a provision of this section, liquidated damages of \$5,000 or actual damages, whichever is greater.

3. Reasonable attorney's fees.

4. Such other relief, including an injunction, as the court may deem appropriate.

(b) Nothing in this section limits the right of the person aggrieved by a violation of this section to recover damages or other relief under any other applicable law.

History - (s. 45, ch. 88-380; s. 14, ch. 89-350; s. 6, ch. 94-90; s. 421, ch. 96-406; s. 1796, ch. 97-102)



§760.51 FS | VIOLATIONS OF CONSTITUTIONAL RIGHTS, CIVIL ACTION BY THE ATTORNEY GENERAL; CIVIL PENALTY

(1) Whenever any person, whether or not acting under color of law, interferes by threats, intimidation, or coercion, or attempts to interfere by threats, intimidation, or coercion, with the exercise or enjoyment by any other person of rights secured by the State Constitution or laws of this state, the Attorney General may bring a civil or administrative action for damages, and for injunctive or other appropriate relief for violations of the rights secured. Any damages recovered under this section shall accrue to the injured person. The civil action shall be brought in the name of the state and may be brought on behalf of the injured person. The Attorney General is entitled to an award of reasonable attorney's fees and costs if the Department of Legal Affairs prevails in an action brought under this section.

(2) Any person who interferes by threats, intimidation, or coercion, or attempts to interfere by threats, intimidation, or coercion, with the exercise or enjoyment by any other person of rights secured by the State Constitution or laws of this state is liable for a civil penalty of not more than \$10,000 for each violation. This penalty may be recovered in any action brought under this section by the Attorney General. A civil penalty so collected shall accrue to the state and shall be deposited as received into the General Revenue Fund unallocated.

History - (s. 4, ch. 91-74)



**§760.60 FS | DISCRIMINATORY PRACTICES OF CERTAIN CLUBS PROHIBITED;
REMEDIES**

(1) It is unlawful for a person to discriminate against any individual because of race, color, religion, gender, national origin, handicap, age above the age of 21, or marital status in evaluating an application for membership in a club that has more than 400 members, that provides regular meal service, and that regularly receives payment for dues, fees, use of space, facilities, services, meals, or beverages directly or indirectly from nonmembers for business purposes. It is unlawful for a person, on behalf of such a club, to publish, circulate, issue, display, post, or mail any advertisement, notice, or solicitation that contains a statement to the effect that the accommodations, advantages, facilities, membership, or privileges of the club are denied to any individual because of race, color, religion, gender, national origin, handicap, age above the age of 21, or marital status. This subsection does not apply to fraternal or benevolent organizations, ethnic clubs, or religious organizations where business activity is not prevalent.

(2) A person who has been discriminated against in violation of this act may file a complaint with the Commission on Human Relations or with the Attorney General's Office of Civil Rights. A complaint must be in writing and must contain such information and be in such form as the commission requires. Upon receipt of a complaint, the commission or the Attorney General shall provide a copy to the person who represents the club. Within 30 days after receiving a complaint, the commission or the Attorney General shall give notice in writing to the person who filed the complaint if it intends to resolve the complaint. If the commission or the Attorney General decides to resolve the complaint, it shall attempt to eliminate or correct the alleged discriminatory practices of a club by informal methods of conference, conciliation, and persuasion.

(3) If the commission or the Attorney General fails, within 30 days after receiving a complaint filed under subsection (2), to give notice of its intent to resolve the complaint, or if the commission or the Attorney General fails to resolve the complaint within 45 days after giving such notice, the person or the Attorney General on behalf of the person filing the complaint may commence a civil action in a court against



the club, its officers, or its members to enforce this section. If the court finds that a discriminatory practice occurs at the club, the court may enjoin the club, its officers, or its members from engaging in such practice or may order other appropriate action.

History - (s. 12, ch. 92-177; s. 6, ch. 2020-153)



APPENDIX



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