

By: Kolkhorst

S.B. No. 2086

A BILL TO BE ENTITLED

AN ACT

relating to a property right in DNA; providing injunctive relief and a civil penalty; creating a criminal offense.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 1, Property Code, is amended by adding Chapter 3 to read as follows:

CHAPTER 3. PROPERTY RIGHT IN DNA

Sec. 3.001. DEFINITIONS. In this chapter:

(1) "DNA" means deoxyribonucleic acid.

(2) "DNA sample" means a blood sample or other biological sample or specimen provided by an individual for the purpose of conducting DNA analysis or storage.

(3) "Genetic characteristic" means a scientifically or medically identifiable genetic or chromosomal variation, composition, or alteration that predisposes an individual to a disease, disorder, or syndrome.

(4) "Genetic test" means a presymptomatic laboratory test of an individual's genes, products, or chromosomes that:

(A) analyzes the individual's DNA, RNA, proteins, or chromosomes; and

(B) is performed to identify a genetic characteristic.

(5) "RNA" means ribonucleic acid.

Sec. 3.002. PROPERTY RIGHT ESTABLISHED. (a) Subject to

1 Subsection (b), an individual has an exclusive property right in
2 the individual's unique DNA. A person may not, without the
3 informed, written consent of the individual or the individual's
4 legal guardian or authorized representative:

- 5 (1) collect a DNA sample from an individual;
- 6 (2) perform a genetic test on an individual's DNA
7 sample;
- 8 (3) retain an individual's DNA sample;
- 9 (4) alter or modify an individual's DNA;
- 10 (5) sell or otherwise transfer to another person an
11 individual's DNA sample; or
- 12 (6) make available or allow to be made available to
13 another person an individual's DNA sample.

14 (b) Notwithstanding Subsection (a), this chapter does not
15 apply to a DNA sample collected for:

- 16 (1) the purpose of emergency medical treatment;
- 17 (2) the purpose of determining paternity;
- 18 (3) law enforcement purposes, including the
19 identification of a perpetrator, the investigation of a crime, or
20 the identification of a missing, unidentified, or deceased person;
21 or
- 22 (4) any other similar use under the laws of this state
23 or another jurisdiction.

24 Sec. 3.003. CIVIL PENALTY; INJUNCTION. (a) A person who
25 violates Section 3.002 is liable to the state for a civil penalty
26 not to exceed the amount of any profits that are attributable to the
27 violation. The amount of profits under this subsection may be

1 established by showing the gross revenue attributable to the
2 unauthorized use minus any expenses that the person who committed
3 the unauthorized use may prove.

4 (b) Subject to Subsection (a), the amount of a civil penalty
5 under this section shall be based on:

6 (1) the seriousness of the violation, including the
7 nature, circumstances, extent, and gravity of the violation;

8 (2) the economic harm caused by the violation;

9 (3) the history of previous violations;

10 (4) the amount necessary to deter a future violation;

11 (5) efforts to correct the violation; and

12 (6) any other matter that justice may require.

13 (c) If it appears that a person has violated Section 3.002,
14 the attorney general may institute an action for a civil penalty,
15 injunctive relief, or both.

16 (d) The attorney general may recover reasonable attorney's
17 fees and expenses and court costs incurred in recovering a civil
18 penalty or obtaining injunctive relief under this section.

19 Sec. 3.004. CRIMINAL PENALTY. A person commits an offense
20 if the person, with criminal negligence, violates Section 3.002.
21 An offense under this section is a Class A misdemeanor.

22 SECTION 2. Chapter 3, Property Code, as added by this Act,
23 does not apply to the use or retention of a DNA sample collected or
24 provided before the effective date of this Act.

25 SECTION 3. This Act takes effect September 1, 2023.