

By: Nelson

S.B. No. 53

A BILL TO BE ENTITLED

AN ACT

relating to the use of genetic testing information by insurers.

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

SECTION 1. Section 546.002, Insurance Code, as effective April 1, 2005, is amended to read as follows:

Sec. 546.002. APPLICABILITY OF CHAPTER. This chapter applies only to a ~~group~~ health benefit plan that:

(1) provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including:

(A) an individual, ~~a~~ group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or ~~a~~ group evidence of coverage that is offered by:

- (i) an insurance company;
- (ii) a group hospital service corporation operating under Chapter 842;
- (iii) a fraternal benefit society operating under Chapter 885;
- (iv) a stipulated premium company operating under Chapter 884; or
- (v) a health maintenance organization operating under Chapter 843; and

(B) to the extent permitted by the Employee

1 Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et
2 seq.), a [~~group~~] health benefit plan that is offered by:

3 (i) a multiple employer welfare arrangement
4 as defined by Section 3 of that Act;

5 (ii) another entity not authorized under
6 this code or another insurance law of this state that directly
7 contracts for health care services on a risk-sharing basis,
8 including a capitation basis; or

9 (iii) another analogous benefit
10 arrangement; or

11 (2) is offered by an approved nonprofit health
12 corporation that holds a certificate of authority under Chapter
13 844.

14 SECTION 2. Section 546.003, Insurance Code, as effective
15 April 1, 2005, is amended to read as follows:

16 Sec. 546.003. EXCEPTIONS. This chapter does not apply to:

17 (1) a plan that provides coverage:

18 (A) only for a specified disease;

19 (B) only for accidental death or dismemberment;

20 (C) for wages or payments in lieu of wages for a
21 period during which an employee is absent from work because of
22 sickness or injury; or

23 (D) as a supplement to liability insurance;

24 (2) a Medicare supplemental policy as defined by
25 Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss);

26 (3) workers' compensation insurance coverage;

27 (4) medical payment insurance coverage provided under

1 a motor vehicle insurance policy; or

2 (5) a long-term care policy, including a nursing home
3 fixed indemnity policy, unless the commissioner determines that the
4 policy provides benefit coverage so comprehensive that the policy
5 is a ~~[group]~~ health benefit plan as described by Section 546.002.

6 SECTION 3. Section 546.051, Insurance Code, as effective
7 April 1, 2005, is amended to read as follows:

8 Sec. 546.051. CERTAIN TESTING PERMITTED; INDUCEMENT
9 PROHIBITED. (a) A ~~[group]~~ health benefit plan issuer that
10 requests an applicant for coverage under the plan to submit to a
11 genetic test in connection with the application for coverage for a
12 purpose not prohibited under Section 546.052 must:

13 (1) notify the applicant that the test is required;

14 (2) disclose to the applicant the proposed use of the
15 test results; and

16 (3) obtain the applicant's written informed consent
17 before the test is administered.

18 (b) The applicant shall state in the consent form whether
19 the applicant elects to be informed of the test results. If the
20 applicant elects to be informed, the person or entity that performs
21 the test shall disclose the test results to the applicant and the
22 ~~[group]~~ health benefit plan issuer. The issuer shall ensure that:

23 (1) the applicant receives an interpretation of the
24 test results made by a qualified health care practitioner; and

25 (2) a physician or other health care practitioner
26 designated by the applicant receives a copy of the test results.

27 (c) A ~~[group]~~ health benefit plan issuer may not use the

1 results of a genetic test conducted in accordance with Subsection
2 (a) to induce the purchase of coverage under the plan.

3 SECTION 4. Section 546.052, Insurance Code, as effective
4 April 1, 2005, is amended to read as follows:

5 Sec. 546.052. IMPROPER USE OF TEST RESULTS; REFUSAL TO
6 SUBMIT TO TESTING. A [~~group~~] health benefit plan issuer may not
7 use genetic information or the refusal of an applicant to submit to
8 a genetic test to reject, deny, limit, cancel, refuse to renew,
9 increase the premiums for, or otherwise adversely affect
10 eligibility for or coverage under the plan.

11 SECTION 5. Section 546.053, Insurance Code, as effective
12 April 1, 2005, is amended to read as follows:

13 Sec. 546.053. TESTING RELATED TO PREGNANCY. (a) In this
14 section, "coerce" means to restrain or dominate a woman's free will
15 by actual or implied:

16 (1) force; or

17 (2) threat of rejecting, denying, limiting,
18 canceling, refusing to renew, or otherwise adversely affecting
19 eligibility for coverage under a [~~group~~] health benefit plan.

20 (b) A [~~group~~] health benefit plan issuer may not:

21 (1) require as a condition of coverage genetic testing
22 of a child in utero without the pregnant woman's consent; or

23 (2) use genetic information to coerce or compel a
24 pregnant woman to have an induced abortion.

25 SECTION 6. Subsection (a), Section 546.101, Insurance Code,
26 as effective April 1, 2005, is amended to read as follows:

27 (a) An individual who submits to a genetic test has the

1 right to know the results of the test. On the written request by the
2 individual, the [~~group~~] health benefit plan issuer or other entity
3 that performed the test shall disclose the test results to:

4 (1) the individual; or

5 (2) a physician designated by the individual.

6 SECTION 7. Subsection (c), Section 546.102, Insurance Code,
7 as effective April 1, 2005, is amended to read as follows:

8 (c) This section applies to a redisclosure of genetic
9 information by a secondary recipient of the information after
10 disclosure of the information by an initial recipient. Except as
11 provided by Section 546.103(b), a [~~group~~] health benefit plan
12 issuer may not redisclose genetic information unless the
13 redisclosure is consistent with the disclosures authorized by the
14 tested individual under an authorization executed under Section
15 546.104.

16 SECTION 8. Subsection (b), Section 546.103, Insurance Code,
17 as effective April 1, 2005, is amended to read as follows:

18 (b) A [~~group~~] health benefit plan issuer may redisclose
19 genetic information without an authorization under Section
20 546.104:

21 (1) for actuarial or research studies if:

22 (A) a tested individual could not be identified
23 in any actuarial or research report; and

24 (B) any materials that identify a tested
25 individual are returned or destroyed as soon as reasonably
26 practicable;

27 (2) to the department for the purpose of enforcing

1 this chapter; or

2 (3) for a purpose directly related to enabling a
3 business decision to be made about:

4 (A) purchasing, transferring, merging, or
5 selling all or part of an insurance business; or

6 (B) obtaining reinsurance affecting that
7 insurance business.

8 SECTION 9. Section 546.104, Insurance Code, as effective
9 April 1, 2005, is amended to read as follows:

10 Sec. 546.104. AUTHORIZED DISCLOSURE. An individual or an
11 individual's legal representative may authorize disclosure of
12 genetic information relating to the individual by an authorization
13 that:

14 (1) is written in plain language;

15 (2) is dated;

16 (3) contains a specific description of the information
17 to be disclosed;

18 (4) identifies or describes each person authorized to
19 disclose the genetic information to a [~~group~~] health benefit plan
20 issuer;

21 (5) identifies or describes the individuals or
22 entities to whom the disclosure or subsequent redisclosure of the
23 genetic information may be made;

24 (6) describes the specific purpose of the disclosure;

25 (7) is signed by the individual or legal
26 representative and, if the disclosure is made to claim proceeds of
27 an affected life insurance policy, the claimant; and

1 (8) advises the individual or legal representative
2 that the individual's authorized representative is entitled to
3 receive a copy of the authorization.

4 SECTION 10. Section 546.151, Insurance Code, as effective
5 April 1, 2005, is amended to read as follows:

6 Sec. 546.151. CEASE AND DESIST ORDER. (a) On a finding by
7 the commissioner that a [~~group~~] health benefit plan issuer is in
8 violation of this chapter, the commissioner may issue a cease and
9 desist order in the manner provided by Chapter 83.

10 (b) If a [~~group~~] health benefit plan issuer refuses or fails
11 to comply with a cease and desist order issued under this section,
12 the commissioner may, in the manner provided by this code and other
13 insurance laws of this state, revoke or suspend the issuer's
14 certificate of authority or other authorization to operate a
15 [~~group~~] health benefit plan in this state.

16 SECTION 11. Section 546.152, Insurance Code, as effective
17 April 1, 2005, is amended to read as follows:

18 Sec. 546.152. ADMINISTRATIVE PENALTY. A [~~group~~] health
19 benefit plan issuer that operates a plan in violation of this
20 chapter is subject to an administrative penalty as provided by
21 Chapter 84.

22 SECTION 12. This Act applies only to a health benefit plan
23 delivered, issued for delivery, or renewed on or after January 1,
24 2006. A health benefit plan delivered, issued for delivery, or
25 renewed before January 1, 2006, is governed by the law as it existed
26 immediately before the effective date of this Act, and that law is
27 continued in effect for that purpose.

1 SECTION 13. This Act takes effect September 1, 2005.