

1-1 By: Nelson S.B. No. 53  
1-2 (In the Senate - Filed November 8, 2004; January 31, 2005,  
1-3 read first time and referred to Committee on State Affairs;  
1-4 March 15, 2005, reported favorably by the following vote: Yeas 9,  
1-5 Nays 0; March 15, 2005, sent to printer.)

1-6 A BILL TO BE ENTITLED  
1-7 AN ACT

1-8 relating to the use of genetic testing information by insurers.

1-9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-10 SECTION 1. Section 546.002, Insurance Code, as effective  
1-11 April 1, 2005, is amended to read as follows:

1-12 Sec. 546.002. APPLICABILITY OF CHAPTER. This chapter  
1-13 applies only to a ~~group~~ health benefit plan that:

1-14 (1) provides benefits for medical or surgical expenses  
1-15 incurred as a result of a health condition, accident, or sickness,  
1-16 including:

1-17 (A) an individual, ~~a~~ group, blanket, or  
1-18 franchise insurance policy or insurance agreement, a group hospital  
1-19 service contract, or an individual or ~~a~~ group evidence of  
1-20 coverage that is offered by:

1-21 (i) an insurance company;  
1-22 (ii) a group hospital service corporation  
1-23 operating under Chapter 842;

1-24 (iii) a fraternal benefit society operating  
1-25 under Chapter 885;

1-26 (iv) a stipulated premium company operating  
1-27 under Chapter 884; or

1-28 (v) a health maintenance organization  
1-29 operating under Chapter 843; and

1-30 (B) to the extent permitted by the Employee  
1-31 Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et  
1-32 seq.), a ~~group~~ health benefit plan that is offered by:

1-33 (i) a multiple employer welfare arrangement  
1-34 as defined by Section 3 of that Act;

1-35 (ii) another entity not authorized under  
1-36 this code or another insurance law of this state that directly  
1-37 contracts for health care services on a risk-sharing basis,  
1-38 including a capitation basis; or

1-39 (iii) another analogous benefit  
1-40 arrangement; or

1-41 (2) is offered by an approved nonprofit health  
1-42 corporation that holds a certificate of authority under Chapter  
1-43 844.

1-44 SECTION 2. Section 546.003, Insurance Code, as effective  
1-45 April 1, 2005, is amended to read as follows:

1-46 Sec. 546.003. EXCEPTIONS. This chapter does not apply to:

1-47 (1) a plan that provides coverage:

1-48 (A) only for a specified disease;

1-49 (B) only for accidental death or dismemberment;

1-50 (C) for wages or payments in lieu of wages for a  
1-51 period during which an employee is absent from work because of  
1-52 sickness or injury; or

1-53 (D) as a supplement to liability insurance;

1-54 (2) a Medicare supplemental policy as defined by  
1-55 Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss);

1-56 (3) workers' compensation insurance coverage;

1-57 (4) medical payment insurance coverage provided under  
1-58 a motor vehicle insurance policy; or

1-59 (5) a long-term care policy, including a nursing home  
1-60 fixed indemnity policy, unless the commissioner determines that the  
1-61 policy provides benefit coverage so comprehensive that the policy  
1-62 is a ~~group~~ health benefit plan as described by Section 546.002.

1-63 SECTION 3. Section 546.051, Insurance Code, as effective  
1-64 April 1, 2005, is amended to read as follows:

2-1 Sec. 546.051. CERTAIN TESTING PERMITTED; INDUCEMENT  
2-2 PROHIBITED. (a) A [group] health benefit plan issuer that  
2-3 requests an applicant for coverage under the plan to submit to a  
2-4 genetic test in connection with the application for coverage for a  
2-5 purpose not prohibited under Section 546.052 must:

- 2-6 (1) notify the applicant that the test is required;
- 2-7 (2) disclose to the applicant the proposed use of the  
2-8 test results; and
- 2-9 (3) obtain the applicant's written informed consent  
2-10 before the test is administered.

2-11 (b) The applicant shall state in the consent form whether  
2-12 the applicant elects to be informed of the test results. If the  
2-13 applicant elects to be informed, the person or entity that performs  
2-14 the test shall disclose the test results to the applicant and the  
2-15 [group] health benefit plan issuer. The issuer shall ensure that:

- 2-16 (1) the applicant receives an interpretation of the  
2-17 test results made by a qualified health care practitioner; and
- 2-18 (2) a physician or other health care practitioner  
2-19 designated by the applicant receives a copy of the test results.

2-20 (c) A [group] health benefit plan issuer may not use the  
2-21 results of a genetic test conducted in accordance with Subsection  
2-22 (a) to induce the purchase of coverage under the plan.

2-23 SECTION 4. Section 546.052, Insurance Code, as effective  
2-24 April 1, 2005, is amended to read as follows:

2-25 Sec. 546.052. IMPROPER USE OF TEST RESULTS; REFUSAL TO  
2-26 SUBMIT TO TESTING. A [group] health benefit plan issuer may not  
2-27 use genetic information or the refusal of an applicant to submit to  
2-28 a genetic test to reject, deny, limit, cancel, refuse to renew,  
2-29 increase the premiums for, or otherwise adversely affect  
2-30 eligibility for or coverage under the plan.

2-31 SECTION 5. Section 546.053, Insurance Code, as effective  
2-32 April 1, 2005, is amended to read as follows:

2-33 Sec. 546.053. TESTING RELATED TO PREGNANCY. (a) In this  
2-34 section, "coerce" means to restrain or dominate a woman's free will  
2-35 by actual or implied:

- 2-36 (1) force; or
- 2-37 (2) threat of rejecting, denying, limiting,  
2-38 canceling, refusing to renew, or otherwise adversely affecting  
2-39 eligibility for coverage under a [group] health benefit plan.

2-40 (b) A [group] health benefit plan issuer may not:

- 2-41 (1) require as a condition of coverage genetic testing  
2-42 of a child in utero without the pregnant woman's consent; or
- 2-43 (2) use genetic information to coerce or compel a  
2-44 pregnant woman to have an induced abortion.

2-45 SECTION 6. Subsection (a), Section 546.101, Insurance Code,  
2-46 as effective April 1, 2005, is amended to read as follows:

2-47 (a) An individual who submits to a genetic test has the  
2-48 right to know the results of the test. On the written request by the  
2-49 individual, the [group] health benefit plan issuer or other entity  
2-50 that performed the test shall disclose the test results to:

- 2-51 (1) the individual; or
- 2-52 (2) a physician designated by the individual.

2-53 SECTION 7. Subsection (c), Section 546.102, Insurance Code,  
2-54 as effective April 1, 2005, is amended to read as follows:

2-55 (c) This section applies to a redisclosure of genetic  
2-56 information by a secondary recipient of the information after  
2-57 disclosure of the information by an initial recipient. Except as  
2-58 provided by Section 546.103(b), a [group] health benefit plan  
2-59 issuer may not redisclose genetic information unless the  
2-60 redisclosure is consistent with the disclosures authorized by the  
2-61 tested individual under an authorization executed under Section  
2-62 546.104.

2-63 SECTION 8. Subsection (b), Section 546.103, Insurance Code,  
2-64 as effective April 1, 2005, is amended to read as follows:

2-65 (b) A [group] health benefit plan issuer may redisclose  
2-66 genetic information without an authorization under Section  
2-67 546.104:

- 2-68 (1) for actuarial or research studies if:
- 2-69 (A) a tested individual could not be identified

3-1 in any actuarial or research report; and  
3-2 (B) any materials that identify a tested  
3-3 individual are returned or destroyed as soon as reasonably  
3-4 practicable;

3-5 (2) to the department for the purpose of enforcing  
3-6 this chapter; or

3-7 (3) for a purpose directly related to enabling a  
3-8 business decision to be made about:

3-9 (A) purchasing, transferring, merging, or  
3-10 selling all or part of an insurance business; or

3-11 (B) obtaining reinsurance affecting that  
3-12 insurance business.

3-13 SECTION 9. Section 546.104, Insurance Code, as effective  
3-14 April 1, 2005, is amended to read as follows:

3-15 Sec. 546.104. AUTHORIZED DISCLOSURE. An individual or an  
3-16 individual's legal representative may authorize disclosure of  
3-17 genetic information relating to the individual by an authorization  
3-18 that:

3-19 (1) is written in plain language;

3-20 (2) is dated;

3-21 (3) contains a specific description of the information  
3-22 to be disclosed;

3-23 (4) identifies or describes each person authorized to  
3-24 disclose the genetic information to a [~~group~~] health benefit plan  
3-25 issuer;

3-26 (5) identifies or describes the individuals or  
3-27 entities to whom the disclosure or subsequent redisclosure of the  
3-28 genetic information may be made;

3-29 (6) describes the specific purpose of the disclosure;

3-30 (7) is signed by the individual or legal  
3-31 representative and, if the disclosure is made to claim proceeds of  
3-32 an affected life insurance policy, the claimant; and

3-33 (8) advises the individual or legal representative  
3-34 that the individual's authorized representative is entitled to  
3-35 receive a copy of the authorization.

3-36 SECTION 10. Section 546.151, Insurance Code, as effective  
3-37 April 1, 2005, is amended to read as follows:

3-38 Sec. 546.151. CEASE AND DESIST ORDER. (a) On a finding by  
3-39 the commissioner that a [~~group~~] health benefit plan issuer is in  
3-40 violation of this chapter, the commissioner may issue a cease and  
3-41 desist order in the manner provided by Chapter 83.

3-42 (b) If a [~~group~~] health benefit plan issuer refuses or fails  
3-43 to comply with a cease and desist order issued under this section,  
3-44 the commissioner may, in the manner provided by this code and other  
3-45 insurance laws of this state, revoke or suspend the issuer's  
3-46 certificate of authority or other authorization to operate a  
3-47 [~~group~~] health benefit plan in this state.

3-48 SECTION 11. Section 546.152, Insurance Code, as effective  
3-49 April 1, 2005, is amended to read as follows:

3-50 Sec. 546.152. ADMINISTRATIVE PENALTY. A [~~group~~] health  
3-51 benefit plan issuer that operates a plan in violation of this  
3-52 chapter is subject to an administrative penalty as provided by  
3-53 Chapter 84.

3-54 SECTION 12. This Act applies only to a health benefit plan  
3-55 delivered, issued for delivery, or renewed on or after January 1,  
3-56 2006. A health benefit plan delivered, issued for delivery, or  
3-57 renewed before January 1, 2006, is governed by the law as it existed  
3-58 immediately before the effective date of this Act, and that law is  
3-59 continued in effect for that purpose.

3-60 SECTION 13. This Act takes effect September 1, 2005.

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