

By: Kolkhorst

H.B. No. 2110

A BILL TO BE ENTITLED

1 AN ACT

2 relating to a property right in certain DNA samples; providing
3 penalties.

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

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

7 CHAPTER 3. PROPERTY RIGHT IN CERTAIN DNA SAMPLES

8 Sec. 3.001. DEFINITIONS. In this chapter:

9 (1) "DNA" means deoxyribonucleic acid.

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

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

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

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

21 (B) is performed to identify a genetic
22 characteristic.

23 (5) "Property right" means the property right created
24 by this chapter.

1 (6) "RNA" means ribonucleic acid.

2 Sec. 3.002. PROPERTY RIGHT ESTABLISHED. (a) Subject to
3 Subsection (b), an individual has an exclusive property right in a
4 DNA sample provided by the individual. A person may not, without
5 the informed, written consent of the individual or the individual's
6 legal guardian or authorized representative:

7 (1) collect a DNA sample from an individual;

8 (2) perform a genetic test on an individual's DNA
9 sample; or

10 (3) retain an individual's DNA sample.

11 (b) Notwithstanding Subsection (a), this chapter does not
12 apply to:

13 (1) a DNA sample collected for the purpose of
14 emergency medical treatment;

15 (2) a DNA sample collected for law enforcement
16 purposes, including the identification of a perpetrator and the
17 investigation of a crime, or identification of a missing,
18 unidentified, or deceased person; or

19 (3) any other similar use of a DNA sample under the
20 laws of this state or another jurisdiction.

21 Sec. 3.003. CIVIL PENALTY; INJUNCTION. (a) A person who
22 violates Section 3.002 is liable to the state for a civil penalty
23 not to exceed the amount of any profits that are attributable to the
24 violation. The amount of profits under this subsection may be
25 established by showing the gross revenue attributable to the
26 unauthorized use minus any expenses that the person who committed
27 the unauthorized use may prove.

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

3 (1) the seriousness of the violation, including the
4 nature, circumstances, extent, and gravity of the violation;

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

6 (3) the history of previous violations;

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

8 (5) efforts to correct the violation; and

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

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

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

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

19 SECTION 2. Chapter 3, Property Code, as added by this Act,
20 applies only to a DNA sample collected or provided on or after the
21 effective date of this Act. A DNA sample collected or provided
22 before the effective date of this Act is governed by the law in
23 effect immediately before that date, and that law is continued in
24 effect for that purpose.

25 SECTION 3. This Act takes effect September 1, 2011.