

By: Sanford

H.B. No. 4441

A BILL TO BE ENTITLED

AN ACT

relating to restrictions on the use and disclosure of certain genetic material and genetic information; providing a civil penalty; creating a criminal offense.

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

SECTION 1. Subtitle H, Title 2, Health and Safety Code, is amended by adding Chapter 174 to read as follows:

CHAPTER 174. RESTRICTIONS ON USE AND DISCLOSURE OF CERTAIN GENETIC MATERIAL AND GENETIC INFORMATION

Sec. 174.001. DEFINITIONS. In this chapter:

(1) "Authorized representative" means an individual who is authorized under state or federal law to make health care decisions on behalf of another individual.

(2) "DNA" means deoxyribonucleic acid.

(3) "Genetic analysis" means a test of an individual's genetic material to determine the presence or absence of genetic characteristics in an individual or family.

(4) "Genetic characteristic" means a scientifically or medically identifiable genetic or chromosomal variation, composition, or alteration that:

(A) is scientifically or medically believed to predispose an individual to a disease, disorder, or syndrome; or

(B) is used to identify an individual or blood relative.

1 (5) "Genetic information" means information related
2 to the genetic characteristics of an individual or the individual's
3 family that is derived from the results of a genetic analysis.

4 (6) "Genetic material" means an individual's DNA, gene
5 products, or chromosomes.

6 Sec. 174.002. USE AND DISCLOSURE OF GENETIC MATERIAL OR
7 GENETIC INFORMATION PROHIBITED; EXCEPTIONS. (a) Subject to other
8 law other than Subsection (c) and unless an individual or the
9 individual's authorized representative provides informed consent,
10 a person may not:

11 (1) obtain the individual's genetic material or
12 genetic information;

13 (2) perform a genetic analysis of the individual;

14 (3) retain the individual's genetic material or
15 genetic information; or

16 (4) disclose, including through sale or donation, the
17 individual's genetic material or genetic information.

18 (b) For purposes of Subsection (a), an individual or the
19 individual's authorized representative provides informed consent
20 by signing a consent form that:

21 (1) discloses the proposed use of the individual's
22 genetic material or genetic information;

23 (2) describes the individual's rights under this
24 chapter;

25 (3) describes the genetic analysis, genetic
26 collection, or other use for which the individual's genetic
27 material or genetic information is obtained; and

1 (4) describes the nature of the resulting genetic
2 material or genetic information, including a DNA profile, obtained
3 from the genetic analysis, genetic collection, or other use of
4 genetic material.

5 (c) The prohibitions under Subsection (a) do not apply to an
6 individual's genetic material or genetic information that is:

7 (1) disclosed to the individual or the individual's
8 authorized representative;

9 (2) obtained for use by a clinical laboratory from the
10 individual's treating physician in the diagnosis or treatment of
11 the individual;

12 (3) disclosed as part of an authorized research
13 project under which the identity and genetic material of the
14 individual is kept anonymous; or

15 (4) obtained or otherwise necessary for use:

16 (A) for an authorized law enforcement purpose;

17 (B) to comply with a court order;

18 (C) under an administrative order to determine
19 the paternity of an individual or for another purpose;

20 (D) to identify a deceased individual;

21 (E) to conduct a newborn screening test under
22 Chapter 33;

23 (F) to provide emergency medical services; or

24 (G) under a third-party service contract or other
25 obligation for the storage, retrieval, handling, or transmission of
26 the DNA or DNA record.

27 (d) Subsection (c)(2) does not waive any requirement for a

1 physician to obtain informed consent from an individual before
2 extracting genetic material from the individual for the performance
3 of a genetic analysis or for another purpose.

4 (e) Subject to Subsection (f), the use of an individual's
5 genetic material or genetic information permitted under Subsection
6 (c) is restricted to only that permitted use and the material or
7 information must be destroyed or returned to the individual or the
8 individual's authorized representative immediately on completion
9 of the permitted use.

10 (f) A person who obtains an individual's genetic material to
11 perform a genetic analysis of the individual for a permitted use
12 under Subsection (c) shall, immediately on completion of the
13 genetic analysis, destroy the material and any genetic information
14 obtained from the analysis unless the retention of the material or
15 information is:

16 (1) necessary for a permitted use under Subsection
17 (c); or

18 (2) specifically authorized by the individual or the
19 individual's authorized representative.

20 (g) An individual or the individual's authorized
21 representative may, subject to other law, inspect, correct, or
22 obtain the individual's genetic material or genetic information.

23 Sec. 174.003. CRIMINAL PENALTY. (a) A person commits an
24 offense if the person violates this chapter.

25 (b) An offense under this section is a Class A misdemeanor
26 punishable by:

27 (1) for a first violation of this chapter, a fine of

1 not less than \$3,000 and not more than \$4,000; and

2 (2) for a second and each subsequent violation of this
3 chapter, a fine of not less than \$4,000 and not more than \$10,000.

4 (c) Each day a violation occurs or continues to occur is a
5 separate violation for purposes of assessing a penalty under this
6 section.

7 Sec. 174.004. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The
8 attorney general may bring an action against a person who appears to
9 be in violation of this chapter or is threatening to violate this
10 chapter.

11 (b) In an injunction issued under this section, a court may
12 include reasonable requirements to prevent any further violations
13 of this chapter.

14 (c) In addition to the injunctive relief provided by
15 Subsection (a), the attorney general may institute an action for
16 civil penalties against a person for a violation of this chapter. A
17 civil penalty assessed under this section may not be less than
18 \$4,000 or more than \$10,000 for each violation. Each day a
19 violation occurs or continues to occur is a separate violation for
20 purposes of assessing a penalty under this subsection.

21 (d) The attorney general may recover reasonable expenses
22 incurred in bringing an action under this section, including court
23 costs, attorney's fees, investigative costs, witness fees, and
24 deposition expenses.

25 (e) The attorney general shall file an action under this
26 section in Travis County or in the county in which the violation
27 occurred.

1 (f) A civil penalty recovered in an action by the attorney
2 general under this section shall be deposited in the general
3 revenue fund.

4 Sec. 174.005. PRIVATE RIGHT OF ACTION. (a) An individual
5 whose genetic material or genetic information is obtained, used, or
6 disclosed in violation of this chapter may bring an action to enjoin
7 or restrain a person from committing any further violations of this
8 chapter and may seek damages in the action.

9 (b) A court may award a prevailing party in an action
10 brought under this section reasonable attorney's fees and costs
11 reasonably incurred with the action.

12 Sec. 174.006. WAIVER OF SOVEREIGN OR GOVERNMENTAL IMMUNITY.
13 Sovereign or governmental immunity, as applicable, of a
14 governmental entity to suit and from liability is waived to the
15 extent of liability created by this chapter.

16 SECTION 2. Chapter 174, Health and Safety Code, as added by
17 this Act, applies only to the use or disclosure of genetic material
18 or genetic information that occurs on or after the effective date of
19 this Act.

20 SECTION 3. This Act takes effect September 1, 2021.