

By: Hughes

S.B. No. 962

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.

(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 that is derived
3 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, in person or
10 electronically, express consent, 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 or
14 any other analysis or test of the individual that requires the
15 individual's genetic material;

16 (3) retain the individual's genetic material or
17 genetic information; or

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

20 (b) For purposes of Subsection (a), an individual or the
21 individual's authorized representative provides, in person or
22 electronically, express consent if, after receiving a written
23 disclosure statement that clearly and prominently describes the
24 manner in which the individual's genetic material or genetic
25 information or the results of a genetic analysis or other analysis
26 or test of the individual will be collected, used, retained,
27 maintained, or disclosed, the individual or representative takes an

1 affirmative action demonstrating an intentional decision to
2 provide consent. The disclosure statement must at a minimum:

3 (1) disclose the proposed use of the individual's
4 genetic material or genetic information;

5 (2) describe the individual's rights regarding the
6 collection, use, retention, maintenance, or disclosure of the
7 individual's genetic material or genetic information or the results
8 of a genetic analysis or other analysis or test of the individual;

9 (3) describe the genetic analysis, genetic
10 collection, or other use for which the individual's genetic
11 material or genetic information is obtained; and

12 (4) describe the nature of the resulting genetic
13 material or genetic information, including a DNA profile, obtained
14 from the genetic analysis, genetic collection, or other use of
15 genetic material.

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

18 (1) disclosed to the individual or the individual's
19 authorized representative;

20 (2) obtained from the individual's treating physician
21 for use in the screening, diagnosis, or treatment of the individual
22 by a clinical laboratory that is certified by the Centers for
23 Medicare and Medicaid Services;

24 (3) disclosed as part of an authorized research
25 project under which the identity and genetic material of the
26 individual is de-identified in accordance with the Health Insurance
27 Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d

1 et seq.) or 45 C.F.R. Part 46;

2 (4) obtained or otherwise necessary for use:

3 (A) for an authorized law enforcement purpose;

4 (B) to comply with a court order;

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

7 (D) to identify a deceased individual;

8 (E) to conduct a newborn screening test under
9 Chapter 33;

10 (F) to provide emergency medical services;

11 (G) under a third-party service contract or other
12 obligation for the storage, retrieval, handling, or transmission of
13 the DNA or DNA record; or

14 (H) to comply with federal law; or

15 (5) made public by the individual.

16 (d) Subsection (c)(2) does not waive any requirement for a
17 physician to obtain informed consent from an individual before
18 extracting genetic material from the individual for the performance
19 of a genetic analysis or for another purpose.

20 (e) Subject to Subsection (f), the use of an individual's
21 genetic material or genetic information permitted under Subsection
22 (c) is restricted to only that permitted use and the material or
23 information must be destroyed or returned to the individual or the
24 individual's authorized representative immediately on completion
25 of the permitted use.

26 (f) A person who obtains an individual's genetic material to
27 perform a genetic analysis of the individual for a permitted use

1 under Subsection (c) shall, immediately on completion of the
2 genetic analysis, destroy the material and any genetic information
3 obtained from the analysis unless the retention of the material or
4 information is:

5 (1) necessary for a permitted use under Subsection
6 (c); or

7 (2) specifically authorized by the individual or the
8 individual's authorized representative.

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

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

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

16 (1) for a first violation of this chapter, a fine of
17 not less than \$3,000 and not more than \$4,000; and

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

20 (c) Each day a violation occurs or continues to occur is a
21 separate violation for purposes of assessing a penalty under this
22 section.

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

27 (b) In an injunction issued under this section, a court may

1 include reasonable requirements to prevent any further violations
2 of this chapter.

3 (c) In addition to the injunctive relief provided by
4 Subsection (a), the attorney general may institute an action for
5 civil penalties against a person for a violation of this chapter. A
6 civil penalty assessed under this section may not be less than
7 \$4,000 or more than \$10,000 for each violation. Each day a
8 violation occurs or continues to occur is a separate violation for
9 purposes of assessing a penalty under this subsection.

10 (d) The attorney general may recover reasonable expenses
11 incurred in bringing an action under this section, including court
12 costs, attorney's fees, investigative costs, witness fees, and
13 deposition expenses.

14 (e) The attorney general shall file an action under this
15 section in Travis County or in the county in which the violation
16 occurred.

17 (f) A civil penalty recovered in an action by the attorney
18 general under this section shall be deposited in the general
19 revenue fund.

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

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

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

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

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