

By: Paxton

S.B. No. 1952

A BILL TO BE ENTITLED

AN ACT

relating to the capture and use of an individual's biometric identifiers, specimen, or genetic information by a governmental body or peace officer or by a person for commercial purposes.

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

SECTION 1. The heading to Title 11, Business & Commerce Code, is amended to read as follows:

TITLE 11. PERSONAL [~~IDENTITY~~] INFORMATION

SECTION 2. The heading to Subtitle A, Title 11, Business & Commerce Code, is amended to read as follows:

SUBTITLE A. IDENTIFYING AND OTHER PERSONAL INFORMATION

SECTION 3. The heading to Chapter 503, Business & Commerce Code, is amended to read as follows:

CHAPTER 503. BIOMETRIC IDENTIFIERS AND COLLECTION OF SPECIMEN FROM INDIVIDUALS FOR DIAGNOSTIC PURPOSES

SECTION 4. The heading to Section 503.001, Business & Commerce Code, is amended to read as follows:

Sec. 503.001. CAPTURE OR USE OF BIOMETRIC IDENTIFIER; COLLECTION OR USE OF SPECIMEN.

SECTION 5. Section 503.001, Business & Commerce Code, is amended by amending Subsections (a), (b), and (c) and adding Subsections (c-3) and (c-4) to read as follows:

(a) In this section:

(1) "Biometric [~~"biometric~~] identifier" means a

1 retina or iris scan, fingerprint, voiceprint, or record of hand or
2 face geometry.

3 (2) "Specimen" means a sample of an individual's
4 blood, urine, or other bodily fluid or tissue taken for scientific
5 analysis to detect or diagnose a disease.

6 (b) A person may not capture a biometric identifier of or
7 collect a specimen from an individual for a commercial purpose
8 unless the person:

9 (1) informs the individual before capturing the
10 biometric identifier or collecting the specimen; and

11 (2) receives the individual's consent to capture the
12 biometric identifier or collect the specimen.

13 (c) A person who possesses a biometric identifier or
14 specimen of an individual that is captured or collected for a
15 commercial purpose:

16 (1) may not sell, lease, or otherwise disclose the
17 biometric identifier or specimen test results to another person
18 unless:

19 (A) the individual consents to the disclosure for
20 identification purposes in the event of the individual's
21 disappearance or death;

22 (B) the disclosure of a biometric identifier
23 completes a financial transaction that the individual requested or
24 authorized;

25 (C) the disclosure is required or permitted by a
26 federal statute or by a state statute other than Chapter 552,
27 Government Code; or

1 (D) the disclosure is made by or to a law
2 enforcement agency for a law enforcement purpose in response to a
3 warrant;

4 (2) shall store, transmit, and protect from disclosure
5 the biometric identifier or specimen test results using reasonable
6 care and in a manner that is the same as or more protective than the
7 manner in which the person stores, transmits, and protects any
8 other confidential information the person possesses; and

9 (3) shall destroy the biometric identifier or specimen
10 within a reasonable time, but not later than the first anniversary
11 of the date the purpose for collecting the identifier or specimen
12 expires, except as provided by Subsection (c-1).

13 (c-3) A person who captures a biometric identifier of or
14 collects a specimen from an individual for a commercial purpose
15 shall provide to the individual information on:

16 (1) the type of technology or scientific testing to be
17 used on the identifier or specimen;

18 (2) the purpose of and method for capturing or
19 collecting the identifier or specimen; and

20 (3) the method for storing data related to the
21 captured or collected identifier or specimen.

22 (c-4) A person who collects a specimen from an individual to
23 test for a specific disease may not use or analyze the specimen for
24 a purpose unrelated to the test unless the individual consents to
25 the use for another purpose.

26 SECTION 6. Chapter 18, Code of Criminal Procedure, is
27 amended by adding Article 18.25 to read as follows:

1 Art. 18.25. WARRANTS FOR GENETIC INFORMATION FROM CERTAIN
2 BUSINESSES. (a) This article applies to a business that collects
3 and analyzes genetic information to provide information about an
4 individual's genetic traits or biological relationships.

5 (b) A peace officer may require a business described by
6 Subsection (a) to provide the genetic information of a customer of
7 the business by obtaining a warrant under this chapter or by
8 obtaining the consent of the customer.

9 (c) A peace officer who obtains a warrant with respect to
10 genetic information held by a business described by Subsection (a)
11 may apply to the court issuing the warrant for an order commanding
12 the business to whom the warrant is directed not to disclose to any
13 person the existence of the warrant. The order is effective for the
14 period the court considers appropriate. The court shall enter the
15 order under this subsection if the court determines that there is
16 reason to believe that notification of the existence of the warrant
17 will lead to an adverse result, including:

18 (1) endangering the life or physical safety of an
19 individual;

20 (2) flight from prosecution;

21 (3) destruction of or tampering with evidence;

22 (4) intimidation of a potential witness; or

23 (5) otherwise seriously jeopardizing an investigation
24 or unduly delaying a trial.

25 (d) Unless an order is issued under Subsection (c), the
26 peace officer who executes a warrant for a customer's genetic
27 information shall notify the customer whose genetic information is

1 the subject of the warrant of the existence of the warrant.

2 SECTION 7. The heading to Chapter 560, Government Code, is
3 amended to read as follows:

4 CHAPTER 560. BIOMETRIC IDENTIFIER AND GENETIC INFORMATION

5 SECTION 8. Section 560.001, Government Code, is amended by
6 amending Subdivision (1) and adding Subdivisions (3) and (4) to
7 read as follows:

8 (1) "Biometric identifier" means any measurement of
9 the human body or its movement that is used to attempt to uniquely
10 identify or authenticate the identity of a person, including a
11 blood sample, hair sample, skin sample, body scan, retina or iris
12 scan, fingerprint, voiceprint, or record of hand or face geometry.

13 (3) "Genetic information" means information that is:

14 (A) obtained from or based on a scientific or
15 medical determination of the presence or absence in an individual
16 of a genetic characteristic; or

17 (B) derived from the results of a genetic test of
18 an individual's genes, gene products, or chromosomes.

19 (4) "Genetic test" has the meaning assigned by Section
20 546.001, Insurance Code.

21 SECTION 9. Chapter 560, Government Code, is amended by
22 adding Section 560.0015 to read as follows:

23 Sec. 560.0015. STATUTORY AUTHORITY REQUIRED. (a) A
24 governmental body may not capture or possess a biometric identifier
25 of an individual or require a biometric identifier as a
26 prerequisite for providing a governmental service to the individual
27 unless the governmental body:

1 (1) has specific, explicit statutory authority that:

2 (A) allows the governmental body to:

3 (i) capture or possess the individual's
4 biometric identifier; or

5 (ii) require a biometric identifier as a
6 prerequisite for providing a governmental service to the
7 individual; or

8 (B) allows the governmental body to require and
9 obtain the written consent of the individual or the individual's
10 legal guardian before:

11 (i) capturing or possessing the
12 individual's biometric identifier; or

13 (ii) requiring a biometric identifier as a
14 prerequisite for providing a governmental service to the
15 individual;

16 (2) obtains the voluntary, written consent of the
17 individual or the individual's legal guardian;

18 (3) is a health care provider or health care facility
19 that captures, possesses, or requires the biometric identifier
20 while providing health care services to the individual; or

21 (4) is a criminal justice agency, as defined by
22 Article 66.001, Code of Criminal Procedure, that captures,
23 possesses, or requires the biometric identifier while engaged in
24 the administration of criminal justice, as defined by that article.

25 (b) For purposes of Subsection (a), Subchapter B, Chapter
26 33, Health and Safety Code, is specific, explicit statutory
27 authority under Subsection (a)(1)(A)(i) to capture or possess an

1 individual's biometric identifier in the conduct of newborn
2 screening as provided by that subchapter.

3 SECTION 10. Chapter 560, Government Code, is amended by
4 adding Sections 560.004, 560.005, 560.006, and 560.007 to read as
5 follows:

6 Sec. 560.004. DESTRUCTION OF SAMPLE GENETIC MATERIAL;
7 EXCEPTIONS. A governmental body shall promptly destroy a sample of
8 genetic material obtained from an individual for a genetic test
9 after the purpose for which the sample was obtained is accomplished
10 unless:

11 (1) the sample is retained under a court order;
12 (2) the individual authorizes retention of the sample
13 for medical treatment or scientific research;

14 (3) the sample was obtained for research authorized by
15 an institutional review board and retention of the sample is:

16 (A) under a requirement the institutional review
17 board imposes on a specific research project; or

18 (B) authorized by the research participant with
19 institutional review board approval under federal law; or

20 (4) the sample was obtained for a screening test
21 prescribed by the Department of State Health Services under Section
22 33.011, Health and Safety Code, and performed by that department or
23 a laboratory approved by that department.

24 Sec. 560.005. CONFIDENTIALITY OF GENETIC INFORMATION. (a)
25 Except as provided by Sections 560.006(a) and (b), genetic
26 information is confidential and privileged regardless of the source
27 of the information.

1 (b) A governmental body that holds an individual's genetic
2 information may not disclose or be compelled to disclose, by
3 subpoena or otherwise, that information unless the disclosure is
4 specifically authorized by the individual as provided by Section
5 560.007.

6 (c) This section applies to a redisclosure of genetic
7 information by a secondary recipient of the information after
8 disclosure of the information by an initial recipient. Except as
9 provided by Section 560.006(b), a governmental body may not
10 redisclose genetic information unless the redisclosure is
11 consistent with the disclosures authorized by the tested individual
12 under an authorization executed under Section 560.007.

13 Sec. 560.006. EXCEPTIONS TO CONFIDENTIALITY. (a) Subject
14 to Subchapter G, Chapter 411, genetic information may be disclosed
15 without an authorization under Section 560.007 if the disclosure
16 is:

17 (1) authorized under a state or federal criminal law
18 relating to:

19 (A) the identification of individuals; or

20 (B) a criminal or juvenile proceeding, an
21 inquest, or a child fatality review by a multidisciplinary
22 child-abuse team;

23 (2) required under a specific order of a state or
24 federal court;

25 (3) for the purpose of establishing paternity as
26 authorized under a state or federal law;

27 (4) for the purpose of providing genetic information

1 of a decedent and the information is disclosed to the blood
2 relatives of the decedent for medical diagnosis; or

3 (5) for the purpose of identifying a decedent.

4 (b) A governmental body may redisclose genetic information
5 without an authorization under Section 560.007 for actuarial or
6 research studies if:

7 (1) a tested individual could not be identified in any
8 actuarial or research report; and

9 (2) any materials that identify a tested individual
10 are returned or destroyed as soon as reasonably practicable.

11 (c) A redisclosure authorized under Subsection (b) may
12 contain only genetic information reasonably necessary to
13 accomplish the purpose for which the information is disclosed.

14 Sec. 560.007. AUTHORIZED DISCLOSURE. An individual or an
15 individual's legal representative may authorize disclosure of the
16 individual's genetic information by submitting a statement that:

17 (1) is written in plain language and is signed by the
18 individual or legal representative;

19 (2) is dated;

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

22 (4) identifies or describes each person authorized to
23 disclose the genetic information;

24 (5) identifies or describes the individuals or
25 entities to whom the disclosure or subsequent redisclosure of the
26 genetic information may be made;

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

1 and

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

5 SECTION 11. Section 33.012(a), Health and Safety Code, is
6 amended to read as follows:

7 (a) Screening tests may not be administered to a newborn
8 child whose parents, managing conservator, or guardian objects to
9 ~~[on the ground that] the tests [conflict with the religious tenets~~
10 ~~or practices of an organized church of which they are adherents]~~.

11 SECTION 12. Article 18.25, Code of Criminal Procedure, as
12 added by this Act, applies only to a warrant issued on or after the
13 effective date of this Act.

14 SECTION 13. The changes in law made by this Act apply only
15 to a biometric identifier captured, a specimen collected, or
16 genetic information obtained or to a biometric identifier, a
17 specimen, or genetic information requested on or after the
18 effective date of this Act. A biometric identifier, a specimen, or
19 genetic information captured, collected, obtained, or requested
20 before that date is governed by the law in effect immediately before
21 the effective date of this Act, and that law is continued in effect
22 for that purpose.

23 SECTION 14. This Act takes effect September 1, 2021.