

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 2086
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Health & Human Services
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Deoxyribonucleic acid (DNA) and genetic mapping have come a long way from the first X-ray crystallography photographs in 1951. Today, within hours, a person's DNA can be shipped, tested, and unzipped. From disease predisposition to unknown biological relatives to ethnic heritage—everything about a person can be discovered and mapped from a simple DNA sample.

However, the average Texan currently has little protection or understanding of their rights over personal genetic information. Under current statute, individual protections are limited.

The growing interest in DNA-based products in the marketplace has increased concerns over whether or not a person has ownership over their DNA and genetic information. DNA testing and direct-to-consumer testing kits, such as 23andMe and AncestryDNA, have given private companies access to a person's genetic information with minimal oversight. There is limited privacy and protection against what is done with an individual's DNA once it is in the company's possession or outsourced to a third party.

Additionally, the United States medical community is researching the functionality of DNA vaccines to protect against bacterial and viral agents. No DNA vaccines have been approved in the United States, but there is already expressed concern about the improper use of an individual's DNA without their knowledge or consent.

S.B. 2086 seeks to remedy this by treating DNA as an individual's personal property.

Committee Substitute Changes

The substitute adds that a person may not sell, transfer, make available, or allow to be made available to another person an individual's DNA sample without the individual's consent.

C.S.S.B. 2086 amends current law relating to a property right in DNA, provides injunctive relief and a civil penalty, and creates a criminal offense.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 1, Property Code, by adding Chapter 3, as follows:

CHAPTER 3. PROPERTY RIGHT IN DNA

Sec. 3.001. DEFINITIONS. Defines "DNA," "DNA sample," "genetic characteristic," "genetic test," and "RNA."

Sec. 3.002. PROPERTY RIGHT ESTABLISHED. (a) Provides that an individual, subject to Subsection (b), has an exclusive property right in the individual's unique DNA.

Prohibits a person from, without the informed, written consent of the individual or the individual's legal guardian or authorized representative:

- (1) collecting a DNA sample from an individual;
- (2) performing a genetic test on an individual's DNA sample;
- (3) retaining an individual's DNA sample;
- (4) altering or modifying an individual's DNA;
- (5) selling or otherwise transferring to another person an individual's DNA sample; or
- (6) making available or allowing to be made available to another person an individual's DNA sample.

(b) Provides that this chapter, notwithstanding Subsection (a), does not apply to a DNA sample collected for:

- (1) the purpose of emergency medical treatment;
- (2) the purpose of determining paternity;
- (3) law enforcement purposes, including the identification of a perpetrator, the investigation of a crime, or the identification of a missing, unidentified, or deceased person; or
- (4) any other similar use under the laws of this state or another jurisdiction.

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

(b) Requires that the amount of a civil penalty under this section, subject to Subsection (a), be based on:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
- (2) the economic harm caused by the violation;
- (3) the history of previous violations;
- (4) the amount necessary to deter a future violation;
- (5) efforts to correct the violation; and
- (6) any other matter that justice may require.

(c) Authorizes the attorney general, if it appears that a person has violated Section 3.002, to institute an action for a civil penalty, injunctive relief, or both.

(d) Authorizes the attorney general to recover reasonable attorney's fees and expenses and court costs incurred in recovering a civil penalty or obtaining injunctive relief under this section.

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

SECTION 2. Provides that Chapter 3, Property Code, as added by this Act, does not apply to the use or retention of a DNA sample collected or provided before the effective date of this Act.

SECTION 3. Effective date: September 1, 2023.