88R228 YDB/JSC-D

By:  Paxton S.B. No. 704

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; authorizing civil penalties.

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, GENETIC INFORMATION, AND SPECIMEN COLLECTION

SECTION 4.  Chapter 503, Business & Commerce Code, is amended by adding Section 503.0005 to read as follows:

Sec. 503.0005.  DEFINITIONS. In this chapter:

(1)  "Deidentified data" means data not reasonably linked to an identifiable individual.

(2)  "Direct-to-individual genetic testing company" means an entity that:

(A)  offers genetic testing products or services directly to individuals; or

(B)  collects, uses, or analyzes genetic data that an individual provides to the entity.

(3)  "DNA" means deoxyribonucleic acid.

(4)  "Express consent" means an individual's affirmative response to a clear and meaningful notice regarding the collection, use, or disclosure of genetic data for a specific purpose.

(5)  "Genetic data" means any data, regardless of format, concerning an individual's genetic characteristics. The term:

(A)  includes:

(i)  raw sequence data derived from sequencing all or a portion of an individual's extracted DNA;

(ii)  genotypic and phenotypic information obtained from analyzing an individual's raw sequence data; and

(iii)  health information regarding the health conditions that an individual self-reports to a company and that the company:

(a)  uses for scientific research or product development; and

(b)  analyzes in connection with the individual's raw sequence data; and

(B)  does not include deidentified data.

(6)  "Genetic testing" means:

(A)  a laboratory test of an individual's complete DNA, regions of DNA, chromosomes, genes, or gene products to determine the presence of the individual's genetic characteristics; or

(B)  an interpretation of an individual's genetic data.

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

SECTION 5.  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 6.  Section 503.001, Business & Commerce Code, is amended by amending Subsections (b) and (c) and adding Subsection (c-3) to read as follows:

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

(1)  informs the individual before capturing the biometric identifier or collecting the specimen of the pending capture or collection; [~~and~~]

(2)  receives the individual's consent to capture the biometric identifier or collect the specimen; and

(3)  if capturing a biometric identifier, informs the individual before capturing the biometric identifier of the purposes for which the person will use the biometric identifier.

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 7.  Chapter 503, Business & Commerce Code, is amended by adding Sections 503.002, 503.003, 503.004, and 503.005 to read as follows:

Sec. 503.002.  REQUIREMENTS FOR CERTAIN USES OF DEIDENTIFIED DATA. (a) Except as otherwise provided by this chapter or other law, a direct-to-individual genetic testing company that possesses an individual's deidentified data shall:

(1)  implement administrative and technical measures to ensure the data is not associated with a specific individual; and

(2)  publicly commit to maintaining and using data in deidentified form and refraining from making any attempt to identify an individual using the individual's deidentified data.

(b)  If a direct-to-individual genetic testing company shares an individual's deidentified data with another person, the company shall enter into a legally enforceable contractual obligation prohibiting the person from attempting to identify an individual using the individual's deidentified data.

Sec. 503.003.  REQUIREMENTS FOR CERTAIN USES OF GENETIC DATA AND SPECIMEN. (a) A direct-to-individual genetic testing company shall develop, implement, and maintain:

(1)  a comprehensive security program to protect an individual's genetic data against unauthorized access, use, or disclosure; and

(2)  a prominent, publicly available privacy notice that includes information about the company's data collection, consent, use, access, disclosure, transfer, security, retention, and deletion practices.

(b)  Before collecting, using, or disclosing an individual's genetic data, a direct-to-individual genetic testing company shall provide to the individual:

(1)  information about the company's collection, use, and disclosure of genetic data the company collects through a genetic testing product or service, including information that:

(A)  clearly describes the company's use of the genetic data;

(B)  specifies the persons who have access to test results; and

(C)  specifies the manner in which the company may share the genetic data; and

(2)  the privacy notice required by Subsection (a)(2).

(c)  A direct-to-individual genetic testing company shall provide a process for an individual to:

(1)  access the individual's genetic data;

(2)  delete the individual's account and genetic data; and

(3)  destroy or require the destruction of the individual's specimen.

Sec. 503.004.  REQUIRED CONSENT. A direct-to-individual genetic testing company engaging in any of the following activities must obtain:

(1)  an individual's separate express consent for:

(A)  the transfer or disclosure of the individual's genetic data to any person other than the company's vendors and service providers;

(B)  the use of genetic data for a purpose other than the primary purpose of the company's genetic testing product or service; or

(C)  the retention of any specimen provided by the individual following the company's completion of the initial testing service requested by the individual;

(2)  an individual's informed consent in accordance with guidelines for the protection of human subjects issued under 45 C.F.R. Part 46, for transfer or disclosure of the individual's genetic data to a third party for:

(A)  research purposes; or

(B)  research conducted under the control of the company for the purpose of publication or generalizable knowledge; and

(3)  an individual's express consent for:

(A)  marketing by the company to the individual based on the individual's genetic data; or

(B)  marketing by a third party to the individual based on the individual's ordering or purchasing of a genetic testing product or service.

Sec. 503.005.  PROHIBITED DISCLOSURES. (a) A direct-to-individual genetic testing company may not disclose an individual's genetic data to a law enforcement entity or other governmental body unless:

(1)  the company first obtains the individual's express written consent; or

(2)  the entity or body obtains a warrant under Article 18.25, Code of Criminal Procedure, or complies with another valid legal process required by the company.

(b)  A direct-to-individual genetic testing company may not disclose, without first obtaining an individual's written consent, the individual's genetic data to:

(1)  an entity that offers health insurance, life insurance, or long-term care insurance; or

(2)  an employer of the individual.

SECTION 8.  Section 503.001(d), Business & Commerce Code, is redesignated as Section 503.006, Business & Commerce Code, and amended to read as follows:

Sec. 503.006.  CIVIL PENALTY. [~~(d)~~] A person who violates this chapter [~~section~~] is subject to a civil penalty of not more than $25,000 for each violation. The attorney general may bring an action to recover the civil penalty.

SECTION 9.  Chapter 18, Code of Criminal Procedure, is amended by adding Article 18.25 to read as follows:

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

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

(c)  A court may issue a warrant for genetic information held by a business described by Subsection (a) only if the applicant for the warrant shows that reasonable investigative leads have been pursued and have failed to identify the perpetrator of an alleged criminal offense. For purposes of this subsection, reasonable investigative leads are credible, case-specific facts, information, or circumstances that would lead a reasonably cautious investigator to believe that pursuit of the leads would have a fair probability of identifying the perpetrator of the offense.

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

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

(2)  flight from prosecution;

(3)  destruction of or tampering with evidence;

(4)  intimidation of a potential witness; or

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

(e)  Unless an order is issued under Subsection (d), the peace officer who executes a warrant for the genetic information of a customer shall notify the customer of the existence of the warrant.

SECTION 10.  The heading to Chapter 560, Government Code, is amended to read as follows:

CHAPTER 560. BIOMETRIC IDENTIFIER AND GENETIC INFORMATION

SECTION 11.  Section 560.001, Government Code, is amended to read as follows:

Sec. 560.001.  DEFINITIONS. In this chapter:

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

(2)  "Genetic information" means information that is:

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

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

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

(4)  "Governmental body" has the meaning assigned by Section 552.003, except that the term includes each entity within or created by the judicial branch of state government.

SECTION 12.  Chapter 560, Government Code, is amended by adding Section 560.0015 to read as follows:

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

(1)  has specific, explicit statutory authority that:

(A)  allows the governmental body to:

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

(ii)  require the individual's biometric identifier as a prerequisite for providing a governmental service to the individual; or

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

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

(ii)  requiring the individual's biometric identifier as a prerequisite for providing a governmental service to the individual;

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

(3)  is a health care provider or health care facility that captures, possesses, or requires the individual's biometric identifier in the provision of health care services to the individual; or

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

(b)  For purposes of Subsection (a), Subchapter B, Chapter 33, Health and Safety Code, is specific, explicit statutory authority under Subsection (a)(1)(A)(i) to capture or possess an individual's biometric identifier in the conduct of newborn screening as provided by that subchapter.

SECTION 13.  Chapter 560, Government Code, is amended by adding Sections 560.004, 560.005, 560.006, and 560.007 to read as follows:

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

(1)  the sample is retained under a court order;

(2)  the individual authorizes retention of the sample for medical treatment or scientific research;

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

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

(B)  authorized by the research participant with institutional review board approval in accordance with federal law; or

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

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

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

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

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

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

(A)  the identification of individuals; or

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

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

(3)  needed to establish paternity as authorized under a state or federal law;

(4)  needed to provide genetic information of a decedent and the information is disclosed to the blood relatives of the decedent for medical diagnosis; or

(5)  needed to identify a decedent.

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

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

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

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

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

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

(2)  is dated;

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

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

(5)  identifies or describes the individuals or entities to whom the genetic information may be disclosed or subsequently redisclosed;

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

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

SECTION 14.  Section 33.012(a), Health and Safety Code, is amended to read as follows:

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

SECTION 15.  Subchapter C, Chapter 81, Health and Safety Code, is amended by adding Section 81.0465 to read as follows:

Sec. 81.0465.  EXPRESS CONSENT FOR SPECIMEN COLLECTION, USE, AND DISCLOSURE; CONFIDENTIALITY; CIVIL PENALTY. (a) In this section:

(1)  "COVID-19" means the 2019 novel coronavirus disease.

(2)  "Express consent" means an individual's affirmative response to a clear and meaningful notice regarding the collection, use, or disclosure of a specimen for a specific purpose.

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

(b)  A person who collects a specimen from an individual to test for a specific disease may not use or analyze the specimen for a purpose unrelated to the test without the individual's express consent to the use or analysis for another purpose.

(c)  A person who possesses an individual's specimen that is collected for a commercial purpose shall destroy the specimen within a reasonable time, but not later than the first anniversary of the date the purpose for collecting the specimen expires.

(d)  A person who obtains an individual's specimen or other personal information in relation to the collection of COVID-19 data may not disclose that information without the express consent of the individual.

(e)  A person who violates this section is subject to a civil penalty of not more than $1,000 for each violation. The attorney general may bring an action to recover the civil penalty.

(f)  This section does not apply to a specimen collected by a direct-to-individual genetic testing company as defined by Section 503.0005, Business & Commerce Code.

SECTION 16.  Article 18.25, Code of Criminal Procedure, as added by this Act, applies only to a warrant issued on or after the effective date of this Act.

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

SECTION 18.  This Act takes effect September 1, 2023.