

1-1 By: Hughes S.B. No. 962
 1-2 (In the Senate - Filed March 3, 2021; March 11, 2021, read
 1-3 first time and referred to Committee on Health & Human Services;
 1-4 May 10, 2021, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 7, Nays 2; May 10, 2021,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12		X		
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17		X		

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 962 By: Seliger

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to restrictions on the use and disclosure of certain
 1-22 genetic material and genetic information; providing a civil
 1-23 penalty; creating a criminal offense.

1-24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-25 SECTION 1. Subtitle H, Title 2, Health and Safety Code, is
 1-26 amended by adding Chapter 174 to read as follows:

1-27 CHAPTER 174. RESTRICTIONS ON USE AND DISCLOSURE OF CERTAIN GENETIC
 1-28 MATERIAL AND GENETIC INFORMATION

1-29 Sec. 174.001. DEFINITIONS. In this chapter:

1-30 (1) "Authorized representative" means an individual
 1-31 who is authorized under state or federal law to make health care
 1-32 decisions on behalf of another individual.

1-33 (2) "DNA" means deoxyribonucleic acid.

1-34 (3) "Genetic analysis" means a test of an individual's
 1-35 genetic material to determine the presence or absence of genetic
 1-36 characteristics in an individual.

1-37 (4) "Genetic characteristic" means a scientifically
 1-38 or medically identifiable genetic or chromosomal variation,
 1-39 composition, or alteration that:

1-40 (A) is scientifically or medically believed to
 1-41 predispose an individual to a disease, disorder, or syndrome; or

1-42 (B) is used to identify an individual or blood
 1-43 relative.

1-44 (5) "Genetic information" means information related
 1-45 to the genetic characteristics of an individual that is derived
 1-46 from the results of a genetic analysis.

1-47 (6) "Genetic material" means an individual's DNA, gene
 1-48 products, or chromosomes.

1-49 Sec. 174.002. USE AND DISCLOSURE OF GENETIC MATERIAL OR
 1-50 GENETIC INFORMATION PROHIBITED; EXCEPTIONS. (a) Subject to other
 1-51 law other than Subsection (c) and unless an individual or the
 1-52 individual's authorized representative provides express consent, a
 1-53 person may not:

1-54 (1) obtain the individual's genetic material or
 1-55 genetic information;

1-56 (2) perform a genetic analysis of the individual or
 1-57 any other analysis or test of the individual that requires the
 1-58 individual's genetic material;

1-59 (3) retain the individual's genetic material or
 1-60 genetic information; or

2-1 (4) disclose, including through sale or donation, the
2-2 individual's genetic material or genetic information.
2-3 (b) For purposes of Subsection (a), an individual or the
2-4 individual's authorized representative provides express consent
2-5 if, after receiving a written disclosure statement that clearly and
2-6 prominently describes the manner in which the individual's genetic
2-7 material or genetic information or the results of a genetic
2-8 analysis or other analysis or test of the individual will be
2-9 collected, used, retained, maintained, or disclosed, the
2-10 individual or representative takes an affirmative action
2-11 demonstrating an intentional decision to provide consent. The
2-12 disclosure statement must at a minimum:
2-13 (1) disclose the proposed use of the individual's
2-14 genetic material or genetic information;
2-15 (2) describe the individual's rights regarding the
2-16 collection, use, retention, maintenance, or disclosure of the
2-17 individual's genetic material or genetic information or the results
2-18 of a genetic analysis or other analysis or test of the individual;
2-19 (3) describe the genetic analysis, genetic
2-20 collection, or other use for which the individual's genetic
2-21 material or genetic information is obtained; and
2-22 (4) describe the nature of the resulting genetic
2-23 material or genetic information, including a DNA profile, obtained
2-24 from the genetic analysis, genetic collection, or other use of
2-25 genetic material.
2-26 (c) The prohibitions under Subsection (a) do not apply to an
2-27 individual's genetic material or genetic information that is:
2-28 (1) disclosed to the individual or the individual's
2-29 authorized representative;
2-30 (2) obtained for use by a clinical laboratory from the
2-31 individual's treating physician in the diagnosis or treatment of
2-32 the individual;
2-33 (3) disclosed as part of an authorized research
2-34 project under which the identity and genetic material of the
2-35 individual is de-identified in accordance with the Health Insurance
2-36 Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d
2-37 et seq.);
2-38 (4) obtained or otherwise necessary for use:
2-39 (A) for an authorized law enforcement purpose;
2-40 (B) to comply with a court order;
2-41 (C) under an administrative order to determine
2-42 the paternity of an individual or for another purpose;
2-43 (D) to identify a deceased individual;
2-44 (E) to conduct a newborn screening test under
2-45 Chapter 33;
2-46 (F) to provide emergency medical services;
2-47 (G) under a third-party service contract or other
2-48 obligation for the storage, retrieval, handling, or transmission of
2-49 the DNA or DNA record; or
2-50 (H) to comply with federal law; or
2-51 (5) made public by the individual.
2-52 (d) Subsection (c)(2) does not waive any requirement for a
2-53 physician to obtain informed consent from an individual before
2-54 extracting genetic material from the individual for the performance
2-55 of a genetic analysis or for another purpose.
2-56 (e) Subject to Subsection (f), the use of an individual's
2-57 genetic material or genetic information permitted under Subsection
2-58 (c) is restricted to only that permitted use and the material or
2-59 information must be destroyed or returned to the individual or the
2-60 individual's authorized representative immediately on completion
2-61 of the permitted use.
2-62 (f) A person who obtains an individual's genetic material to
2-63 perform a genetic analysis of the individual for a permitted use
2-64 under Subsection (c) shall, immediately on completion of the
2-65 genetic analysis, destroy the material and any genetic information
2-66 obtained from the analysis unless the retention of the material or
2-67 information is:
2-68 (1) necessary for a permitted use under Subsection
2-69 (c); or

3-1 (2) specifically authorized by the individual or the
3-2 individual's authorized representative.

3-3 (g) An individual or the individual's authorized
3-4 representative may, subject to other law, inspect, correct, or
3-5 obtain the individual's genetic material or genetic information.

3-6 Sec. 174.003. CRIMINAL PENALTY. (a) A person commits an
3-7 offense if the person violates this chapter.

3-8 (b) An offense under this section is a Class A misdemeanor
3-9 punishable by:

3-10 (1) for a first violation of this chapter, a fine of
3-11 not less than \$3,000 and not more than \$4,000; and

3-12 (2) for a second and each subsequent violation of this
3-13 chapter, a fine of not less than \$4,000 and not more than \$10,000.

3-14 (c) Each day a violation occurs or continues to occur is a
3-15 separate violation for purposes of assessing a penalty under this
3-16 section.

3-17 Sec. 174.004. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The
3-18 attorney general may bring an action against a person who appears to
3-19 be in violation of this chapter or is threatening to violate this
3-20 chapter.

3-21 (b) In an injunction issued under this section, a court may
3-22 include reasonable requirements to prevent any further violations
3-23 of this chapter.

3-24 (c) In addition to the injunctive relief provided by
3-25 Subsection (a), the attorney general may institute an action for
3-26 civil penalties against a person for a violation of this chapter. A
3-27 civil penalty assessed under this section may not be less than
3-28 \$4,000 or more than \$10,000 for each violation. Each day a
3-29 violation occurs or continues to occur is a separate violation for
3-30 purposes of assessing a penalty under this subsection.

3-31 (d) The attorney general may recover reasonable expenses
3-32 incurred in bringing an action under this section, including court
3-33 costs, attorney's fees, investigative costs, witness fees, and
3-34 deposition expenses.

3-35 (e) The attorney general shall file an action under this
3-36 section in Travis County or in the county in which the violation
3-37 occurred.

3-38 (f) A civil penalty recovered in an action by the attorney
3-39 general under this section shall be deposited in the general
3-40 revenue fund.

3-41 Sec. 174.005. PRIVATE RIGHT OF ACTION. (a) An individual
3-42 whose genetic material or genetic information is obtained, used, or
3-43 disclosed in violation of this chapter may bring an action to enjoin
3-44 or restrain a person from committing any further violations of this
3-45 chapter and may seek damages in the action.

3-46 (b) A court may award a prevailing party in an action
3-47 brought under this section reasonable attorney's fees and costs
3-48 reasonably incurred with the action.

3-49 Sec. 174.006. WAIVER OF SOVEREIGN OR GOVERNMENTAL IMMUNITY.
3-50 Sovereign or governmental immunity, as applicable, of a
3-51 governmental entity to suit and from liability is waived to the
3-52 extent of liability created by this chapter.

3-53 SECTION 2. Chapter 174, Health and Safety Code, as added by
3-54 this Act, applies only to the use or disclosure of genetic material
3-55 or genetic information that occurs on or after the effective date of
3-56 this Act.

3-57 SECTION 3. This Act takes effect September 1, 2021.

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