

## **BILL ANALYSIS**

Senate Research Center

C.S.H.B. 39  
By: McCall (Zaffirini)  
Economic Development  
5-5-97  
Committee Report (Substituted)

### **DIGEST**

Currently, persons may choose not to undergo genetic testing because they fear results will be released to employers and/or insurers who will use this information to discriminate in employment practices or insurance coverage. This bill would prohibit the use of genetic information for employment, issuance of occupational licenses, and health insurance eligibility. Additionally, this bill would make genetic information confidential and prohibit the disclosure of the information unless authorized by the individual.

### **PURPOSE**

As proposed, C.S.H.B. 39 prohibits the use of genetic information for employment, issuance of occupational licenses, and health insurance eligibility. This bill makes genetic information confidential and prohibits the disclosure of the information unless authorized by the individual.

### **RULEMAKING AUTHORITY**

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

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 21, Labor Code, by adding Subchapter H, as follows:

#### **SUBCHAPTER H. DISCRIMINATORY USE OF GENETIC INFORMATION**

Sec. 21.401. DEFINITIONS. Defines "DNA," "genetic information," "genetic test," or "RNA."

Sec. 21.402. DISCRIMINATORY USE OF GENETIC INFORMATION PROHIBITED.

(a) Provides that an employer commits an unlawful employment practice if the employer fails or refuses to hire, discharges, or otherwise discriminates against an individual with respect to compensation or the terms, conditions, or privileges of employment on the basis of genetic information concerning the individual; or because of the refusal of the individual to submit to a genetic test.

(b) Provides that a labor organization commits an unlawful employment practice if the labor organization excludes or expels from membership or otherwise discriminates against an individual on the basis of genetic information concerning the individual; or because of the refusal of the individual to submit to a genetic test.

(c) Provides that an employment agency commits an unlawful employment practice if the employment agency classifies or refers for employment, fails or refuses to refer for employment, or otherwise discriminates against an individual on the basis of genetic information concerning the individual; or because of the refusal of the individual to submit to a genetic test.

(d) Provides that an employer, labor organization, or employment agency commits an

unlawful employment practice if the employer, labor organization, or employment agency limits, segregates, or classifies an employee, member, or applicant for employment or membership in a way that would deprive or tend to deprive the employee, member, or applicant of employment opportunities or otherwise adversely affect the status of the employee, member, or applicant on the basis of genetic information concerning the employee, member, or applicant; or because of the refusal of the employee, member, or applicant to submit to a genetic test.

Sec. 21.403. INFORMATION CONFIDENTIAL; EXCEPTIONS. Provides that genetic information is confidential and privileged and the holder of the information is prohibited from disclosing genetic information about an individual unless authorized by the individual to do so. Sets forth the provisions by which the disclosure of genetic information is authorized.

Sec. 21.404. RIGHT TO KNOW TEST RESULTS. Provides that an individual who submits to a genetic test has the right to know the results of that test. Requires the entity that performed the test to disclose the test results to the individual or to a physician designated by the individual on the written request of the individual.

Sec. 21.405. RETENTION OF SAMPLE. Sets forth instances in which a sample of genetic material taken for a genetic test from an individual is not required to be destroyed after the purpose for which the sample was taken is accomplished.

SECTION 2. Amends Chapter 20, Title 132, V.T.C.S., by adding Article 9031, as follows:

Art. 9031. PROHIBITED USE OF GENETIC INFORMATION

Sec. 1. DEFINITIONS. Defines "DNA," "genetic information," "genetic test," "licensing authority," "occupational license," "political subdivision," "RNA," and "state agency."

Sec. 2. GENETIC TESTING REQUIREMENT PROHIBITED. Prohibits a licensing authority from denying an application for an occupational license, from suspending, revoking, or refusing to renew an occupational license, or from taking any other disciplinary action against a license holder based on the refusal of the license applicant or license holder to submit to a genetic test; or to reveal whether the applicant or holder has submitted to a genetic test; or the results of any genetic test to which the applicant or holder has submitted.

Sec. 3. INFORMATION CONFIDENTIAL; EXCEPTIONS. (a) Provides that genetic information is confidential and privileged regardless of the source of the information. Prohibits a person or entity that holds that information from disclosing or being compelled to disclose, by subpoena or otherwise, genetic information about an individual unless the disclosure is specifically authorized by the individual as provided by Subsection (b) of this section. Provides that this subsection applies to a redisclosure of genetic information by a secondary recipient of the information after disclosure of the information by an initial recipient.

(b) Authorizes an individual or the legal representative of an individual to authorize the disclosure of genetic information relating to that individual through a written authorization that includes certain information.

(c) Authorizes genetic information relating to an individual, subject to Subchapter G, Chapter 411, Government Code, to be disclosed without the authorization required under Subsection (b) under certain conditions.

(d) Authorizes genetic information relating to an individual to be disclosed without the authorization required under Subsection (b) under certain conditions.

Sec. 4. RIGHT TO KNOW TEST RESULTS. Provides that an individual who submits to a genetic test has the right to know the results of that test. Requires the entity that performed the test, on the written request of the individual, to disclose the test results to the individual

or to a physician designated by the individual.

Sec. 5. RETENTION OF SAMPLE. Requires a sample of genetic material taken for a genetic test from an individual to be destroyed promptly after the purpose for which the sample was obtained is accomplished except under certain conditions.

SECTION 3. Amends Chapter 21E, Insurance Code, by adding Article 21.73, as follows:

Art. 21.73. USE OF GENETIC TESTING INFORMATION BY INSURERS

Sec. 1. DEFINITIONS. Defines "DNA," "genetic information," "genetic test," "group health benefit plan," and "RNA."

Sec. 2. SCOPE OF ARTICLE. Sets forth certain group health benefit plans to which this article applies. Sets forth certain plans to which this article does not apply.

Sec. 3. USE OF GENETIC INFORMATION BY GROUP HEALTH BENEFIT PLAN. (a) Prohibits a group health benefit plan issuer from using genetic information to reject, deny, limit, cancel, refuse to renew, increase the premiums for, or otherwise adversely affect eligibility for or coverage under the group health benefit plan.

(b) Requires an issuer to perform certain actions if a group health benefit plan issuer requests that an applicant for coverage under the plan submit to a genetic test in connection with the application for coverage for a purpose other than a purpose prohibited under Subsection (a) of this section.

(c) Requires the applicant in the consent form, to state whether the applicant elects to be informed of the results of the test. Requires the person or entity that performs the test, if the applicant does so elect, to disclose the results of the test to the applicant, as well as to the group health benefit plan issuer, and the group health benefit plan issuer shall ensure that the applicant receives an interpretation of the test results made by a qualified health care practitioner; and a physician or other care practitioner designated by the applicant receives a copy of the results of the test.

(d) Prohibits the group health benefit plan issuer from using the results of a genetic test conducted in accordance with Subsection (b) as an inducement for the purchase of coverage under the plan.

(e) Prohibits a group health benefit plan issuer from using the refusal of an applicant to submit to a genetic test to reject, deny, limit, cancel, refuse to renew, increase the premiums for, or otherwise adversely affect eligibility for or coverage under the group health benefit plan.

Sec. 4. INFORMATION CONFIDENTIAL; EXCEPTIONS. (a) Provides that genetic information is confidential and privileged regardless of the source of the information. Prohibits a person or entity that holds that information from disclosing or being compelled to disclose, by subpoena or otherwise, genetic information about an individual unless the disclosure is specifically authorized by the individual as provided by Subsection (b). Provides that this subsection applies to a redisclosure of genetic information by a secondary recipient of the information after disclosure of the information by an initial recipient.

(b) Authorizes an individual or the legal representative of an individual from authorizing the disclosure of genetic information relating to that individual through an authorization that contains certain information.

(c) Authorizes genetic information relating to an individual, subject to Chapter 411G, Government Code, to be disclosed without the authorization required under Subsection (b) under certain conditions.

(d) Prohibits a group health issuer from redisclosing genetic information unless the redisclosure is consistent with the disclosures authorized by the tested individual under an authorization form executed under Subsection (b). Authorizes a group health benefit plan issuer to redisclose genetic information to certain entities.

(e) Authorizes a redisclosure authorized under Subsection (d) to contain only information reasonably necessary to accomplish the purpose for which the information is disclosed.

Sec. 5. RIGHT TO KNOW TEST RESULTS. Provides that an individual who submits to a genetic test has the right to know the results of that test. Requires the group health benefit plan issuer or other entity that performed the test to disclose the test results to the individual or to a physician designated by the individual. Provides that the right to information under this section is in addition to any right or requirement established under Section 3 of this article.

Sec. 6. RETENTION OF SAMPLE. Requires a sample of genetic material taken for a genetic test from an individual to be destroyed promptly after the purpose for which the sample was obtained is accomplished except under certain conditions.

Sec. 7. CEASE AND DESIST ORDER; ADMINISTRATIVE PENALTY. Authorizes the commissioner of insurance (commissioner), on a finding by the commissioner that a group health benefit plan issuer is in violation of this article, to enter a cease and desist order in the manner provided under Article 1.10A of this code. Authorizes the commissioner, if the group health benefit plan issuer refuses or fails to comply with the cease and desist order, to revoke or suspend the issuer's certificate of authority or other authorization to engage in the operation of a group health benefit plan in this state. Provides that a group health benefit plan issuer that operates the plan in violation of this article is subject to an administrative penalty as provided by Article 1.10E of this code.

Sec. 8. EFFECT OF PREGNANCY. Prohibits an issuer of a group health benefit plan from requiring as a condition of insurance coverage, genetic testing of a child in utero without the consent of the pregnant woman. Prohibits an issuer of a group health plan from using genetic information to coerce or compel a pregnant woman to have an induced abortion. Defines "coercion."

SECTION 4. Effective date: September 1, 1997.

SECTION 5. Makes application of Article 9031, V.T.C.S., as added by this Act, prospective.

SECTION 6. Makes application of Article 21.73, Insurance Code, as added by this Act, prospective to January 1, 1998.

SECTION 7. Emergency clause.

### **SUMMARY OF COMMITTEE CHANGES**

Amendment 1.

Page 5, line 4, strike "and."

Page 5, line 6, strike "." and substitute "; and."

Page 5, between lines 6 and 7, insert "(3) the information is provided by the Texas Department of Health to comply with Chapter 87, Health and Safety Code."

Page 9, line 9, strike "and."

Page 9, line 11, strike "." and substitute "; and."

Page 9, between lines 11 and 12, insert "(3) the information is provided by the Texas

Department of Health to comply with Chapter 87, Health and Safety Code."

Amendment 2.

Page 18, lines 9 and 10, insert Section 8, in regard to the effect of pregnancy.

Amendment 3.

Page 1, lines 16-18, strike ", proteins," from the proposed definition of "genetic test."

Page 6, lines 10-12, strike ", proteins," from the proposed definition of "genetic test."

Page 10, lines 15-17, strike ", proteins," from the proposed definition of "genetic test."