

BILL ANALYSIS

Senate Research Center
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S.B. 538
By: Moncrief
Economic Development
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As Filed

DIGEST

Currently, Texas law prohibits the use of genetic information for employment, issuance of occupational licenses, and health insurance eligibility. The current law limits the definition of genetic information to a genetic predisposition to a disease or disorder discovered through testing. S.B. 538 expands the current law which prohibits discrimination based on genetic information, to include genetic family history, a genetic physical examination, or a radiologic finding diagnostic.

PURPOSE

As proposed, S.B. 538 expands the current genetic discrimination law to include a prohibition on the use of a genetic family history, a genetic physical examination, or a radiologic finding diagnostic.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 21.401, Labor Code, to redefine “genetic information,” and to define “genetic family history,” and “genetic physical examination.” Makes conforming changes.

SECTION 2. Amends Section 21.402, Labor Code, to provide 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 employment because the individual refuses to submit to a genetic physical examination or genetic test or provide a genetic family history. Makes conforming changes.

SECTION 3. Amends Section 21.403 (c), Labor Code, to authorize genetic information to be disclosed without authorization required under Subsection (b), if the disclosure is made to a physician who refers the individual for a genetic physical examination or a genetic test. Makes a conforming change.

SECTION 4. Amends Section 21.404, Labor Code, as follows:

Sec. 21.404. New heading: RIGHT TO KNOW RESULTS. Provides that an individual who submits to a genetic physical examination or genetic test has the right to know or to refuse to know the results of that examination or test. Requires the physician who requested the examination or test to disclose the results to the individual or to another physician designated by the individual, if the individual elects to know the results. Prohibits the physician who requested the performance of the examination or test from disclosing the results to the individual, if the individual elects not to know the results. Deletes text requiring, on the written request of an individual, an entity that performed a test to disclose the results to and individual or to a physician designated by the individual.

SECTION 5. Amends Section 21.405, Labor Code, to require a genetic material test sample taken from an individual to be promptly destroyed after the purpose for which the sample was obtained is accomplished unless the tested individual authorizes retention of the sample for purposes of medical treatment, DNA banking, or scientific research or retention of the sample is required by an organization that certifies laboratories that perform genetic tests, and is recognized by the Texas Department of Health.

SECTION 6. Amends Section 1, Article 21.73, Insurance Code, to redefine “genetic information,” and to define “genetic family history,” and “genetic physical examination.” Makes conforming changes.

SECTION 7. Amends Sections 3(b), (d), and (e), Article 21.73, Insurance Code, to require a group health benefit plan issuer (issuer) to notify the applicant that the examination, history, or test is required, disclose to the applicant the proposed use of the results and obtain the applicant's prior written informed consent if the issuer requests that an applicant for coverage under the plan submit to a genetic physical examination or genetic test or provide a genetic family history in connection with the application for coverage for a purpose other than a purpose prohibited under Subsection (a). Prohibits a group health benefit plan issuer from using the results of a genetic family history, genetic physical examination, or genetic test conducted in accordance with Subsection (b) of this section as an inducement for the purchase of coverage under the plan. Prohibits a group health benefit plan issuer from using an applicant's refusal to submit to a genetic physical examination, or genetic test, or provide a genetic family history 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. Deletes text requiring a group health benefit plan issuer to disclose to the applicant the proposed use of the test results and obtain the applicant's written informed consent for the test before the administration of the test.

SECTION 8. Amends Section 4(c), Article 21.73, Insurance Code, to authorize subject to Chapter 411B, Government Code, individual genetic information to be disclosed without authorization required under Subsection (b) of this section, if disclosure is made to the physician who refers the individual for a genetic test.

SECTION 9. Amends Section 5, Article 21.73, Insurance Code, as follows:

Sec. 5. New heading: **RIGHT TO KNOW RESULTS**. Provides that an individual who submits to a genetic physical examination or genetic test has the right to know or to refuse to know the results of that examination or test. Requires the physician who requested, rather than the group benefit plan issuer or entity that performed, the examination or test to disclose the results to the individual or to another physician designated by the individual, if the individual elects to know the results, rather than on the written request of the individual. Prohibits the physician who requested the performance of the examination or test from disclosing the results to the individual, if the individual elects not to know the results. Deletes text requiring, on the written request of the individual, the group health benefit plan issuer or other entity that performed the test to disclose the results to the individual or to a physician designated by the individual.

SECTION 10. Amends Section 6, Article 21.73, Insurance Code, to require that the prompt destruction of genetic material taken from an individual's genetic test after the purpose for which the sample was obtained is accomplished unless the individual tested authorizes retention of the sample for purposes of medical treatment, DNA banking, or scientific research retention of the sample is required by an organization that certifies laboratories that perform genetic tests and is recognized by the Texas Department of Health.

SECTION 11. Renumbers Article 9031, V.T.C.S., as added by Section 2, Chapter 1215, Acts of the 75th Legislature, as Article 9032, V.T.C.S., and amends as follows:

Art. 9032. New heading: **PROHIBITED USE OF GENETIC INFORMATION**.

Sec. 1. **DEFINITIONS**. Redefines "genetic information" and defines "genetic family history" and "genetic physical examination." Makes conforming changes.

Sec. 2. **GENETIC TESTING REQUIREMENT PROHIBITED**. Makes conforming changes.

Sec. 3. **INFORMATION CONFIDENTIAL; EXCEPTIONS**. Makes conforming changes.

Sec. 4. New heading: **RIGHT TO KNOW RESULTS**. Makes conforming changes

Sec. 5. **RETENTION OF SAMPLE**. Makes conforming changes.

SECTION 12. Effective date: September 1, 1999.

SECTION 13. Makes application of this Act prospective to January 1, 2000.

SECTION 14. Emergency clause.

