

OCCUPATIONS CODE

TITLE 2. GENERAL PROVISIONS RELATING TO LICENSING

CHAPTER 58. USE OF GENETIC INFORMATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 58.001. DEFINITIONS. In this chapter:

(1) 'DNA' means deoxyribonucleic acid.

(2) 'Family health history' means a history taken by a physician or genetic professional to ascertain genetic or medical information about an individual's family.

(3) 'Genetic characteristic' means a scientifically or medically identifiable genetic or chromosomal variation, composition, or alteration that:

(A) is scientifically or medically believed to:

(i) predispose an individual to a disease, disorder, or syndrome; or

(ii) be associated with a statistically significant increased risk of developing a disease, disorder, or syndrome; and

(B) may or may not be associated with any symptom of an ongoing disease, disorder, or syndrome affecting an individual on the date the genetic information is obtained regarding the individual.

(4) '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 performed on, or a family health history obtained from, an individual.

(5) 'Genetic test' means a presymptomatic laboratory test of an individual's genes, gene products, or chromosomes that:

(A) analyzes the individual's DNA, RNA, proteins, or chromosomes; and

(B) is performed to identify any genetic variation, composition, or alteration that is associated with the

individual's having a statistically increased risk of:

(i) developing a clinically recognized disease, disorder, or syndrome; or

(ii) being a carrier of a clinically recognized disease, disorder, or syndrome.

The term does not include a blood test, cholesterol test, urine test, or other physical test used for a purpose other than determining a genetic or chromosomal variation, composition, or alteration in a specific individual.

(6) 'Licensing authority' means a state agency or political subdivision that issues an occupational license.

(7) 'Occupational license' means a license, certificate, registration, permit, or other form of authorization required by law or rule that must be obtained by an individual to engage in a particular business or occupation.

(8) 'Political subdivision' means a municipality, county, or special district or authority. The term includes a school district.

(9) 'RNA' means ribonucleic acid.

(10) 'State agency' means a department, board, bureau, commission, committee, division, office, council, or agency in the executive or judicial branch of state government.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.001(a), eff. Sept. 1, 2003.

#### SUBCHAPTER B. USE AND RETENTION OF GENETIC INFORMATION

Sec. 58.051. CERTAIN USES OF GENETIC INFORMATION PROHIBITED. A licensing authority may not deny an application for an occupational license, suspend, revoke, or refuse to renew an occupational license, or take any other disciplinary action against a license holder based on the refusal of the license applicant or license holder to:

(1) submit to a genetic test;

(2) submit a family health history;

(3) disclose whether the applicant or holder has submitted to a genetic test; or

(4) disclose the results of any genetic test to which the applicant or holder has submitted.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.001(a), eff. Sept. 1, 2003.

Sec. 58.052. DESTRUCTION OF SAMPLE MATERIAL; EXCEPTIONS. A sample of genetic material obtained from an individual for a genetic test shall be destroyed promptly 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 that is cleared 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 under federal law; or

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

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.001(a), eff. Sept. 1, 2003.

#### SUBCHAPTER C. DISCLOSURE OF GENETIC INFORMATION; CONFIDENTIALITY; EXCEPTIONS

Sec. 58.101. DISCLOSURE OF TEST RESULTS TO INDIVIDUAL TESTED. An individual who submits to a genetic test has the right to know the results of the test. On written request by the individual, the entity that performed the test shall disclose the test results to:

(1) the individual; or

(2) a physician designated by the individual.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.001(a), eff. Sept.

1, 2003.

Sec. 58.102. CONFIDENTIALITY OF GENETIC INFORMATION. (a) Except as provided by Section 58.103, genetic information is confidential and privileged regardless of the source of the information.

(b) A person who holds genetic information about an individual may not disclose or be compelled to disclose, by subpoena or otherwise, that information unless the disclosure is specifically authorized as provided by Section 58.104.

(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.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.001(a), eff. Sept. 1, 2003.

Sec. 58.103. EXCEPTIONS TO CONFIDENTIALITY. (a) Subject to Subchapter G, Chapter 411, Government Code, genetic information may be disclosed without an authorization under Section 58.104 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) for the purpose of establishing paternity as authorized under a state or federal law;

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

(5) made to identify a decedent.

(b) Genetic information may be disclosed without an authorization under Section 58.104 if:

(1) the disclosure is for information from a research

study in which the procedure for obtaining informed written consent and the use of the information is governed by national standards for protecting participants involved in research projects, including guidelines issued under 21 C.F.R. Part 50 and 45 C.F.R. Part 46;

(2) the information does not identify a specific individual; and

(3) the information is provided to the Texas Department of Health to comply with Chapter 87, Health and Safety Code.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.001(a), eff. Sept. 1, 2003.

Sec. 58.104. AUTHORIZED DISCLOSURE. An individual or the legal representative of an individual may authorize disclosure of genetic information relating to the individual by a written authorization that includes:

(1) a description of the information to be disclosed;

(2) the name of the person to whom the disclosure is made; and

(3) the purpose for the disclosure.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.001(a), eff. Sept. 1, 2003.

Sec. 58.105. CIVIL PENALTY. (a) A person who discloses genetic information in violation of Sections 58.102-58.104 is liable for a civil penalty not to exceed \$10,000.

(b) The attorney general may bring an action in the name of the state to recover a civil penalty under this section, plus reasonable attorney's fees and court costs.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 15.002, eff. September 1, 2005.