

## HOUSE BILL NO. HB0086

Genetic data privacy-amendments.

Sponsored by: Select Committee on Blockchain, Financial  
Technology and Digital Innovation Technology

A BILL

for

1 AN ACT relating to genetic data privacy; prohibiting the  
2 collection, retention and disclosure of genetic data as  
3 specified; providing exceptions; providing for a civil  
4 cause of action by the attorney general as specified;  
5 providing definitions; specifying applicability; and  
6 providing for an effective date.

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8 *Be It Enacted by the Legislature of the State of Wyoming:*

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10 **Section 1.** W.S. 35-32-105 is created to read:

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12 **35-32-105. General provisions; limitations.**

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1           (a) The provisions of this chapter applicable to  
2 direct to consumer genetic testing companies shall not be  
3 waived.

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5           (b) The disclosure of genetic data pursuant to this  
6 chapter shall comply with all state and federal laws for  
7 the protection of privacy and security. This chapter shall  
8 not apply to protected health information that is collected  
9 by a covered entity or business associate governed by the  
10 privacy, security and breach notification rules issued by  
11 the United States Department of Health and Human Services  
12 (Parts Regulations) 160 and 164 of Title 45 of the Code of  
13 Federal Services (Parts Regulations) established pursuant  
14 to the federal Health Insurance Portability and  
15 Accountability Act of 1996 (P.L. 104-191) and the federal  
16 Health Information Technology for Economic and Clinical  
17 Health Act (P.L. 111-5).

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19           **Section 2.** W.S. 35-32-101(a)(intro), (iii), (v),  
20 (vi)(A), (B) and by creating new paragraphs (vii) through  
21 (xi), 35-32-102(a), (b)(intro), (xi) and by creating new  
22 subsections (c) and (d), 35-32-103 and 35-32-104(b) and by  
23 creating a new subsection (c) are amended to read:

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## CHAPTER 32

3

GENETIC ~~INFORMATION-DATA~~ PRIVACY

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**35-32-101. Definitions.**

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(a) As used in this chapter unless otherwise defined:

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(iii) "Genetic ~~analysis-testing~~" means a-any  
10 laboratory test of an individual's complete DNA, gene  
11 products-or-regions of DNA, chromosomes to-determine-the  
12 presence-or-absence-of-or-genes-to-determine-the-presence  
13 of genetic characteristics in-of an individual or-family;

14

15

(v) "Genetic ~~information~~" ~~means~~ ~~information~~  
16 about-the-data means any data, regardless of its format,  
17 that concerns an individual's genetic characteristics. of  
18 an individual-or-members-of-an-individual's-family-that-are  
19 the-results-of-genetic-analysis; Genetic data includes:

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(A) Raw sequence data that result from  
22 sequencing of an individual's complete extracted or a  
23 portion of the extracted DNA;

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(B) Genotypic and phenotypic information that results from analyzing the raw sequence data, including any familial inferences therefrom; and

(C) Self reported health information that an individual submits to a company regarding the individual's health conditions and that is used for scientific research or product development and analyzed in connection with the individual's raw sequence data.

(vi) "Informed consent" means the signing of a consent form or forms in writing or by electronic signature as defined in W.S. 40-21-102(a)(viii) by an individual or an individual's authorized representative which includes a description of:

(A) Any genetic ~~analysis—testing~~ to be performed and how the genetic ~~analysis—testing~~ or resulting genetic ~~information—data~~ will be used;

(B) How any genetic ~~information—data~~ will be retained or disclosed;

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2 (vii) "Biological sample" means any material  
3 part of a human, discharge therefrom or derivative thereof  
4 known to contain deoxyribonucleic acid (DNA), such as  
5 tissue, blood, urine or saliva;

6

7 (viii) "Consumer" means a natural person who is  
8 a resident of the state of Wyoming;

9

10 (ix) "Deidentified data" means data that cannot  
11 be used to infer information about or otherwise be linked  
12 to an identifiable individual, and that is subject to:

13

14 (A) Administrative and technical measures  
15 to ensure that the data cannot be associated with a  
16 particular individual;

17

18 (B) Public commitment by the company to  
19 maintain and use data in deidentified form and not attempt  
20 to reidentify data; and

21

1                   (C) Legally enforceable contractual  
2 obligations that prohibit any recipient of the data from  
3 attempting to reidentify the data.

4  
5                   (x) "Direct to consumer genetic testing company"  
6 or "company" means any person that offers consumer genetic  
7 testing products or services directly to consumers or who  
8 collects, uses or analyzes genetic data provided by a  
9 consumer;

10  
11                   (xi) "Express consent" means a consumer's  
12 affirmative response to a clear, meaningful and prominent  
13 notice regarding the collection, use or disclosure of the  
14 consumer's genetic data for a specific purpose.

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16           **35-32-102. Genetic testing; prohibitions; exceptions.**

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18           (a) Except as provided in subsection (b) of this  
19 section, no person conducting genetic ~~analysis—testing~~  
20 shall do any of the following without the informed consent  
21 of the individual or the individual's authorized  
22 representative:

23

1           (i) Obtain an individual's genetic ~~information~~  
2 ~~data~~;

3

4           (ii) Perform ~~a genetic analysis testing~~ on an  
5 individual;

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7           (iii) Retain an individual's genetic ~~information~~  
8 ~~data~~;

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10           (iv) Disclose an individual's genetic  
11 ~~information data~~.

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13           (b) Except as otherwise prohibited by law, an  
14 individual's genetic ~~information data~~ may be obtained,  
15 retained, disclosed and used without informed consent for:

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17           (xi) Services limited to storage, retrieval,  
18 handling or transmission of genetic ~~information data~~ by a  
19 third party service provider pursuant to a contract or  
20 other obligation;

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1       (c) To safeguard the privacy, confidentiality,  
2 security and integrity of a consumer's genetic data, a  
3 direct to consumer genetic testing company shall:

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5           (i) Provide clear and complete information  
6 regarding the company's policies and procedures for the  
7 collection, use or disclosure of genetic data by making  
8 available to a consumer:

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10           (A) A high-level privacy policy overview  
11 that includes essential information about the company's  
12 collection, use or disclosure of genetic data; and

13  
14           (B) A prominent, publicly available privacy  
15 notice that includes, at a minimum, information about the  
16 company's data collection, consent, use, access,  
17 disclosure, transfer, security and retention and deletion  
18 practices.

19  
20           (ii) Obtain a consumer's consent for the  
21 collection, use or disclosure of the consumer's genetic  
22 data including, at a minimum:

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1           (A) Initial express consent that describes  
2 the uses of the genetic data collected through the genetic  
3 testing product or service, and specifies who has access to  
4 test results and how the genetic data may be shared;

5  
6           (B) Separate express consent for  
7 transferring or disclosing the consumer's genetic data to  
8 any person other than the company's vendors and service  
9 providers, or for using genetic data beyond the primary  
10 purpose of the genetic testing product or service and  
11 inherent contextual uses;

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13           (C) Separate express consent for the  
14 retention of any biological sample provided by the consumer  
15 following completion of the initial testing service  
16 requested by the consumer;

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18           (D) Informed consent in compliance with the  
19 federal policy for the protection of human research  
20 subjects, 45 C.F.R. § 46, for transfer or disclosure of the  
21 consumer's genetic data to third party persons for research  
22 purposes or research conducted under the control of the

1 company for the purpose of publication or generalizable  
2 knowledge; and

3  
4 (E) Separate express consent for marketing  
5 to a consumer based on the consumer's genetic data, or for  
6 marketing by a third party person to a consumer based on  
7 the consumer having ordered or purchased a genetic testing  
8 product or service. Marketing does not include the  
9 provision of customized content or offers on the websites  
10 or through the applications or services provided by a  
11 direct to consumer genetic testing company with a  
12 first-party relationship to the customer.

13  
14 (iii) Require valid legal process for disclosing  
15 genetic data to law enforcement or any other government  
16 agency without a consumer's express written consent;

17  
18 (iv) Develop, implement and maintain a  
19 comprehensive security program that protects a consumer's  
20 genetic data against unauthorized access, use or  
21 disclosure; and

22  
23 (v) Provide a process for a consumer to:

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(A) Access the consumer's genetic data;

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(B) Delete the consumer's account and  
genetic data; and

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(C) Request and obtain the destruction of  
the consumer's biological sample.

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(d) Notwithstanding any other provisions in this  
section, a direct to consumer genetic testing company shall  
not disclose a consumer's genetic data to any entity  
offering health insurance, life insurance or long-term care  
insurance, or to any employer of the consumer without the  
consumer's written consent.

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**35-32-103. Genetic data; inspection; retention.**

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(a) An individual or the individual's authorized  
representative may inspect, correct and obtain genetic  
~~information~~data about the individual.

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1           (b) A person conducting genetic ~~analysis—testing~~  
2 shall destroy an individual's genetic ~~information—data~~ upon  
3 request by the individual or the individual's authorized  
4 representative unless:

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6           (i) The ~~information—data~~ was obtained pursuant  
7 to W.S. 35-32-102(b); or

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9           (ii) Retention of the ~~information—data~~ is  
10 necessary for a purpose disclosed to the individual or  
11 representative in the informed consent.

12  
13           (c) Genetic ~~information—data~~ about an individual  
14 obtained pursuant to W.S. 35-32-102(b) shall be used solely  
15 for the purposes obtained and shall be destroyed or  
16 returned to the individual or the individual's authorized  
17 representative upon completion of the purposes for which  
18 the ~~information—data~~ was obtained or in accordance with  
19 law.

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21           **35-32-104. Criminal penalty; private right of action.**

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1           (b) An individual whose rights have been violated  
2 under the provisions of this chapter may bring a civil  
3 action to enjoin or restrain any violation of this chapter  
4 and may in the same action seek damages from the person  
5 violating this chapter. Prior to filing an action under  
6 this subsection the individual shall give notice in writing  
7 to the alleged violator stating fully the nature of the  
8 alleged violation. The alleged violator shall have not  
9 more than sixty (60) days from the date notice is provided  
10 to cure any violation. If, after sixty (60) days the  
11 violation has not been cured, the individual may bring a  
12 civil action. A prevailing party in an action brought under  
13 this subsection may recover all costs and expenses  
14 reasonably associated with the action, including but not  
15 limited to reasonable attorney fees.

16

17           (c) The attorney general may bring an action in the  
18 name of the state or as parens patriae on behalf of  
19 consumers to enforce this chapter. In any action brought by  
20 the attorney general to enforce this chapter, a person  
21 found to have violated this chapter shall be subject to a  
22 civil penalty of two thousand five hundred dollars  
23 (\$2,500.00) for each violation, the recovery of actual

1 damages incurred by consumers on whose behalf the action  
2 was brought and costs and reasonable attorneys' fees  
3 incurred by the office of the attorney general.

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5       **Section 3.** This act shall not apply to contracts for  
6 direct to consumer genetic testing entered into prior to  
7 July 1, 2022.

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9       **Section 4.** This act is effective July 1, 2022.

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(END)