

GOV. MSG. NO. 643

EXECUTIVE CHAMBERS  
HONOLULU

LINDA LINGLE  
GOVERNOR

April 17, 2008

The Honorable Colleen Hanabusa, President  
and Members of the Senate  
Twenty-Fourth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

I am transmitting herewith SB1805 SD1, without my approval, and with the statement of objections relating to the measure.

SB1805 SD1

A BILL FOR AN ACT RELATING TO GENETIC  
COUNSELORS.

Sincerely,

JAMES R. AIONA JR.  
JAMES R. AIONA, JR.  
Acting Governor

EXECUTIVE CHAMBERS

HONOLULU

April 17, 2008

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 1805

Honorable Members  
Twenty-Fourth Legislature  
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 1805, entitled "A Bill for an Act Relating to Genetic Counselors."

The purpose of this bill is to require the Department of Health to establish a licensure program for genetic counselors, in order to ensure access to high quality genetic counseling services.

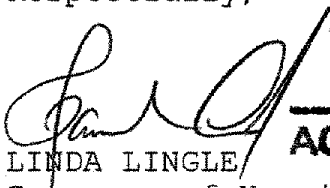
This bill is objectionable because the State Auditor conducted a sunrise analysis of a similar bill in 2006 and found that the licensing of genetic counselors is not necessary and does not meet the criteria for regulation under the Hawaii Regulatory Reform Act. The Auditor's analysis stated that establishing a licensing program is largely about title protection. It gives licensed individuals the ability to use the title but does not prohibit the practice by non-licensed practitioners. The Auditor considered cases of harm cited by supporters of licensing but noted, however, that the harm cited stemmed from those outside regulation. As a result, the Auditor concluded that licensing would have "no bearing on direct, commercial marketing of DNA testing and counseling, especially at-home genetic self testing, which is a burgeoning industry."

There is no question that qualified genetic counselors can provide positive services to individuals with significant health issues. The argument, however, that licensing genetic

counselors will protect those seeking services from incompetent or unscrupulous persons is not valid. The bill prohibits unlicensed individuals from using the title genetic counselor but it would not prohibit them from offering services. Should an individual in need of services seek additional knowledge about a counselor's qualifications, they could consult the American Board of Genetic Counseling which serves as the credentialing organization for the genetic counseling profession in the U.S. and Canada. Although well-intentioned, the licensing of genetic counselors by the State warrants more study and analysis by the Auditor as provided under Chapter 26H, Hawaii Revised Statutes. Finally, procedural flaws under Sections 15 and 16 of Article III of the State Constitution appear to have occurred in the passage of this bill.

For the foregoing reasons, I am returning Senate Bill No. 1805 without my approval.

Respectfully,

  
**ACTING GOVERNOR**  
for LINDA LINGLE  
Governor of Hawaii



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1 "Board certified" means an individual who has passed the  
2 American Board of Genetic Counseling certification examination  
3 and remains actively certified by American Board of Genetic  
4 Counseling.

5 "Board eligible" means an individual who has documentation  
6 of eligibility to take the American Board of Genetic Counseling  
7 certification examinations.

8 "Department" means the department of health.

9 "Director" means the director of health.

10 "Genetic counselor" means a person licensed under this  
11 chapter who engages in genetic counseling practice.

12 "Genetic counseling practice" means the rendering of  
13 professional counseling services based on specialized education  
14 and training to individuals, families, or groups for  
15 compensation, monetary or otherwise. These counseling services  
16 include the communication process which deals with the human  
17 problems associated with the occurrence, or the risk of  
18 occurrence, of a genetic disorder in a family. "Genetic  
19 counseling practice" includes but is not limited to:

- 20 (1) Explaining the nature of genetics' evaluation to  
21 clients. Elicit and interpret comprehensive and



- 1 appropriate medical and family histories, based on the  
2 referral indication, and document the family history  
3 using standard pedigree nomenclature;
- 4 (2) Identify additional client and family medical  
5 information that is necessary for risk assessment and  
6 consideration of differential diagnoses, and assist in  
7 obtaining that information;
- 8 (3) Research and summarize pertinent data from the  
9 published literature, databases, and other  
10 professional resources, as necessary for each client;
- 11 (4) Synthesize client and family medical information and  
12 data obtained from additional research as the basis  
13 for risk assessment, differential diagnosis, genetic  
14 testing options, reproductive options, follow-up  
15 recommendations, and case management;
- 16 (5) Assess and calculate the risk of occurrence or  
17 recurrence of a genetic condition or birth defect  
18 using a variety of techniques, including knowledge of  
19 inheritance patterns, epidemiologic data, quantitative  
20 genetics principles, statistical models, and  
21 evaluation of clinical information, as applicable;



- 1           (6) Explain to clients, verbally, in writing, or both,  
2           medical information regarding the diagnosis or  
3           potential occurrence of a genetic condition or birth  
4           defect, including etiology, natural history,  
5           inheritance, and potential treatment options.  
6           Comprehend the medical facts, including the diagnosis,  
7           probable cause of the disorder, and available  
8           management of the disorder;
- 9           (7) Interpret individual family experiences, behaviors,  
10           emotions, perceptions, values, and cultural and  
11           religious beliefs in order to facilitate  
12           individualized decision making and coping. Promote  
13           client-specific decision making in an unbiased non-  
14           coercive manner that respects a client's culture,  
15           language, tradition, lifestyle, religious beliefs, and  
16           values;
- 17           (8) Assess client understanding and response to medical  
18           information and its implications, and adjust the level  
19           of the educational intervention according to client  
20           competencies; and
- 21           (9) Identify clients' psychological needs, stressors and  
22           sources of emotional and psychological support in

1           order to determine appropriate interventions,  
2           referrals, or both.

3           "Licensed genetic counselor" means an individual who holds  
4 a license in good standing to practice genetic counseling under  
5 this chapter.

6           § -2 Genetic counseling licensure program. There is  
7 established a genetic counseling licensure program within the  
8 department to be administered by the director.

9           § -3 Powers and duties of the director. In addition to  
10 any other powers and duties authorized by law, the director  
11 shall have the following powers and duties:

12           (1) Examine and approve the qualifications of all  
13 applicants under this chapter and issue a license to  
14 each successful applicant granting permission to use  
15 the title of "licensed genetic counselor" or "genetic  
16 counselor" in this State pursuant to this chapter and  
17 the rules adopted pursuant thereto;

18           (2) Adopt, amend, or repeal rules pursuant to chapter 91  
19 as the director finds necessary to carry out this  
20 chapter;

21           (3) Administer, coordinate, and enforce this chapter and  
22 rules adopted pursuant thereto;





1 (4) Discipline a licensed genetic counselor for any cause  
2 described by this chapter or for any violation of the  
3 rules, and refuse to license an individual for failure  
4 to meet licensure requirements or for any cause that  
5 would be grounds for disciplining a licensed genetic  
6 counselor; and

7 (5) Direct the department of health genetics program to  
8 assist with the implementation of this chapter and the  
9 rules adopted pursuant thereto.

10 § -4 Licensure required. No individual shall purport to  
11 be a licensed genetic counselor or use the letters "L.G.C." in  
12 connection with the individual's name, or use any words or  
13 symbols indicating or tending to indicate that the individual is  
14 a licensed genetic counselor without meeting the applicable  
15 requirements and holding a license as set forth in this chapter.

16 § -5 Exemptions. (a) This chapter does not prohibit  
17 any persons legally regulated in this State by any other law  
18 from engaging in the practice for which they are authorized as  
19 long as they do not represent themselves by the title of  
20 "genetic counselor" or "licensed genetic counselor." This  
21 chapter does not prohibit the practice of non-regulated  
22 professions whose practitioners are engaged in the delivery of



1 human services as long as these practitioners do not represent  
2 themselves as or use the title of "genetic counselor" or  
3 "licensed genetic counselor."

4 (b) Nothing in this chapter shall be construed to limit  
5 the activities and services of:

- 6 (1) A student, intern, resident, or fellow in genetic  
7 counseling or genetics seeking to fulfill educational  
8 requirements to qualify for a license under this  
9 chapter if those activities and services constitute a  
10 part of the student's supervised course of study;
- 11 (2) An individual seeking to fulfill the post-degree  
12 practice requirements to qualify for licensing under  
13 this chapter, as long as the activities and services  
14 are supervised by a qualified supervisor. A student,  
15 intern, resident, or fellow must be designated by the  
16 title "intern," "resident," "fellow," or any other  
17 designation of trainee status; or
- 18 (3) An American Board of Genetic Counseling or an American  
19 Board of Medical Genetics certified genetic counselor  
20 who is brought into the State as a consultant to train  
21 genetic counselors within the State. Nothing  
22 contained in this subsection shall be construed to



1 permit students, interns, residents, fellows, or  
2 consultants to offer their services as genetic  
3 counselors or geneticists to any other person.

4 (c) Nothing in this chapter shall be construed to prevent  
5 a physician licensed to practice medicine in this State or  
6 intern, fellow, or resident from performing genetic counseling  
7 within the person's scope of practice as long as the person is  
8 not in any manner held out to the public as a "genetic  
9 counselor" or "licensed genetic counselor."

10 (d) Nothing in this chapter shall be construed to prevent  
11 any licensed nurse in this State from performing genetic  
12 counseling within the nurse's scope of practice as long as the  
13 nurse is not in any manner held out to the public as a "genetic  
14 counselor" or "licensed genetic counselor."

15 (e) Nothing in this chapter shall be construed to prevent  
16 any licensed social worker, licensed psychologist, or licensed  
17 marriage and family therapist from practicing professional  
18 counseling in this State as long as that person is not in any  
19 manner held out to the public as a "genetic counselor" or  
20 "licensed genetic counselor" and does not hold out the person's  
21 services as being genetic counseling.



1           **§ -6 Licensure requirements.** The director shall adopt  
2 rules as deemed necessary for the licensure of genetic  
3 counselors to protect public health and safety and may consider  
4 the following factors as evidence in determining whether an  
5 applicant is qualified to be licensed:

6           (1) The applicant is board certified by the American Board  
7           of Genetic Counseling; and

8           (2) A report of any disciplinary action or rejections of  
9           license applications or renewals relating to genetic  
10          counseling practice taken against the applicant in  
11          another jurisdiction.

12          **§ -7 Provisional license.** (a) The director shall  
13 grant, upon application and payment of proper fees, provisional  
14 licensure to an individual who, at the time of application, is  
15 documented to be board eligible by the American Board of Genetic  
16 Counseling.

17          (b) Provisional licenses will only be issued for a maximum  
18 of four years from the time of granting of the provisional  
19 license.

20          **§ -8 Licensure by endorsement.** The director shall  
21 grant, upon application and payment of proper fees, licensure to  
22 an individual who, at the time of application, holds a valid



1 license as a genetic counselor issued by another state,  
2 territory, or jurisdiction if the requirements for that  
3 certification or license are equal to, or greater than, the  
4 requirements of this chapter.

5       § -9 **Issuance of license.** The director shall issue a  
6 license to any individual who meets the requirements of this  
7 chapter, upon payment of the prescribed fees.

8       § -10 **Renewal of license.** (a) Every license issued  
9 under this chapter shall be renewed annually on or before  
10 June 30, with the first renewal deadline occurring on July 1,  
11 2009. Failure to renew a license shall result in a forfeiture  
12 of the license. Licenses that have been so forfeited may be  
13 restored within one year of the expiration date upon payment of  
14 renewal and penalty fees. Failure to restore a forfeited  
15 license within six months of the date of its expiration shall  
16 result in the automatic termination of the license, and re-  
17 licensure may require the individual to apply as a new  
18 applicant.

19       (b) An applicant who is board eligible shall obtain  
20 American Board of Genetic Counseling certification within two  
21 examination cycles to continue to be eligible for license  
22 renewal.



1           § -11 Application for licensure. (a) Application for a  
2 license shall be made on an application form to be furnished by  
3 the department. An applicant shall provide the following  
4 information on the application form:

- 5           (1) The applicant's legal name;
- 6           (2) The applicant's current residence and business mailing  
7 addresses and phone numbers;
- 8           (3) The applicant's social security number;
- 9           (4) The date and place of any conviction of a penal crime  
10 directly related to the profession or vocation in  
11 which the applicant is applying for licensure, unless  
12 the conviction has been expunged or annulled, or is  
13 otherwise precluded from consideration by section  
14 831-3.1;
- 15           (5) Proof that the applicant is a United States citizen, a  
16 United States national, or an alien authorized to work  
17 in the United States;
- 18           (6) Disclosure of similar licensure in any state or  
19 territory;
- 20           (7) Disclosure of disciplinary action by any state or  
21 territory against any license held by the applicant;  
22 and



1           (8) Any other information the licensing authority may  
2           require to investigate the applicant's qualifications  
3           for licensure.

4           (b) Failure to provide the above information and pay the  
5           required fees shall be grounds to deny the application for  
6           licensure.

7           §   -12 Fees; disposition. (a) Application, examination,  
8           reexamination, license, renewal, late renewal penalty fees,  
9           inactive, and other reasonable and necessary fees relating to  
10          administration of this chapter shall be as provided in rules  
11          adopted by the director pursuant to chapter 91.

12          (b) Fees assessed shall defray all costs to be incurred by  
13          the director to support the operation of the genetic counselor  
14          licensure program.

15          §   -13 Revocation, suspension, denial, or condition of  
16          licenses; fines. In addition to any other acts or conditions  
17          provided by law, the director may refuse to renew, reinstate, or  
18          restore, or may deny, revoke, suspend, fine, or condition in any  
19          manner any license for any one or more of the following acts or  
20          conditions on the part of the applicant or licensed genetic  
21          counselor:



- 1 (1) Conviction by a court of competent jurisdiction of a  
2 crime that the director has determined to be of a  
3 nature that renders the individual convicted unfit to  
4 practice genetic counseling;
- 5 (2) Failure to report in writing to the director any  
6 disciplinary decision or rejection of license  
7 application or renewal related to genetic practice  
8 issued against the licensed genetic counselor or the  
9 applicant in any jurisdiction within thirty days of  
10 the disciplinary decision or within twenty days of  
11 licensure;
- 12 (3) Violation of recognized ethical standards for genetic  
13 counselors as set by the National Society of Genetic  
14 Counselors;
- 15 (4) Use of fraud, deception, or misrepresentation in  
16 obtaining a license;
- 17 (5) Revocation, suspension, or other disciplinary action  
18 by another state, territory, federal agency, or  
19 country against the licensed genetic counselor or  
20 applicant for any reason provided under this section;  
21 or





1 (6) Other just and sufficient cause that renders an  
2 individual unfit to practice genetic counseling.

3 § -14 Hearings; appeals. The director shall establish a  
4 hearing and appeals process for persons who wish to appeal their  
5 revocation, suspension, denial, or condition of license.

6 § -15 Prohibited acts; penalties. (a) No individual  
7 shall:

8 (1) Use in connection with the person's name any  
9 designation tending to imply that the individual is a  
10 licensed genetic counselor unless the individual is  
11 duly licensed and authorized under this chapter; or

12 (2) Make a representation that the individual is a  
13 licensed genetic counselor during the time the  
14 person's license issued under this chapter is  
15 forfeited, inactive, terminated, suspended, or  
16 revoked.

17 (b) Any individual who violates this section shall be  
18 subject to a fine of not more than \$1,000 and each day's  
19 violation shall be deemed a separate offense."

20 SECTION 3. This Act shall take effect on July 1, 2008.

