

State laws pertaining to surreptitious DNA testing

The Genetics and Public Policy Center has conducted a survey of state laws to determine whether and to what extent states restrict collection of DNA samples, DNA analysis, and disclosure of test results without the consent of the person tested (actions we refer to collectively as “surreptitious DNA testing”). As part of this analysis, we looked at how “genetic test” and related terms are defined and whether these definitions include only health-related testing or extend to non-health-related purposes such as parentage determination. We also looked at whether state statutes defined DNA as property or as confidential, but we did not examine whether and to what extent general laws protecting property or prohibiting invasion of privacy would apply to surreptitious DNA testing. We did not include in our analysis state laws prohibiting genetic discrimination unless those laws also addressed collection, analysis, or disclosure of test results without consent.

We found 10 states that restrict surreptitious collection, analysis, and/or disclosure for both health- and non-health-related purposes, 15 states that restrict surreptitious testing for health-related purposes only, six states with restrictions in the context of court-ordered parentage proceedings, and two states with employment-related restrictions only. No laws relevant to surreptitious DNA testing were identified in 21 states and the District of Columbia.

Click a state name in the list below to jump to that state’s summary.

Alabama	Montana
Alaska	Nebraska
Arizona	Nevada
Arkansas	New Hampshire
California	New Jersey
Colorado	New Mexico
Connecticut	New York
Delaware	North Carolina
District of Columbia	North Dakota
Florida	Ohio
Georgia	Oklahoma
Hawaii	Oregon
Idaho	Pennsylvania
Illinois	Rhode Island
Indiana	South Carolina
Iowa	South Dakota
Kansas	Tennessee
Kentucky	Texas
Louisiana	Utah
Maine	Vermont
Maryland	Virginia
Massachusetts	Washington
Michigan	West Virginia
Minnesota	Wisconsin
Mississippi	Wyoming
Missouri	

State laws pertaining to surreptitious DNA testing

Alabama

Does the law restrict the collection or analysis of DNA or disclosure of results of analysis?

Yes, in context of court-ordered testing to establish parentage.

Code section(s) analyzed

AL ALS 376, HB 39, 27-53-2

How genetic testing is defined

Genetic testing is "an analysis of genetic markers to exclude or identify a man as the father or a woman as the mother of a child."

Is DNA defined as property or as confidential?

No.

To whom does the law apply and what does it prohibit/restrict?

Any person who "intentionally releases an identifiable specimen of another individual for any purpose other than that relevant to the proceeding regarding parentage without a court order or the written permission of the individual who furnished the specimen."

Exceptions

No exceptions found.

Penalties

Violation is a Class A misdemeanor.

Would state law prohibit surreptitious genetic testing, in particular for purposes of paternity, ancestry, and identity?

In the context of a court proceeding to establish parentage, the law would prohibit the intentional release of an identifiable specimen for any purpose other than that relevant to the proceeding in the absence of a court order or written permission of the person who provided the specimen.

State laws pertaining to surreptitious DNA testing

Alaska

Does the law restrict the collection or analysis of DNA or disclosure of results of analysis?

Yes, the law restricts sample collection, DNA analysis, and disclosure of results without consent.

Code section(s) analyzed

AK Stat. §§18.13.010,18.13.020,18.13.030,18.13.100

How genetic testing is defined

"DNA analysis means DNA or genetic typing and testing to determine the presence or absence of genetic characteristics in an individual, including tests of nucleic acids or chromosomes in order to diagnose or identify a genetic characteristic."

Is DNA defined as property or as confidential?

Yes. "A DNA sample and the results of a DNA analysis performed on the sample are the exclusive property of the person sampled or analyzed."

To whom does the law apply and what does it prohibit/restrict?

Any person who collects a DNA sample, performs DNA analysis, or discloses the results of a DNA analysis without consent of the person tested.

Exceptions

Law enforcement activities, including identification of perpetrators, investigation of crime, and identification of missing or deceased persons; paternity determination; newborn screening; emergency medical treatment.

Penalties

Class A misdemeanor. Person unlawfully tested may bring civil action for monetary damages and penalties.

Would state law prohibit surreptitious genetic testing, in particular for purposes of paternity, ancestry, and identity?

The law would clearly prohibit surreptitious ancestry testing. Whether and under what circumstances the law would prohibit surreptitious paternity and/or identity testing depends on the intended scope of the exceptions provided in the law. The law enforcement and paternity exceptions are not limited to those acting in an official law enforcement or judicial context. It is therefore possible that a private person conducting surreptitious paternity testing or investigating unlawful conduct of another might claim that the exceptions apply. Also note that DNA is defined as property so laws of general applicability may prohibit surreptitious testing.

State laws pertaining to surreptitious DNA testing

Arizona

Does the law restrict the collection or analysis of DNA or disclosure of results of analysis?

Yes, DNA analysis and disclosure for health-related purposes are prohibited without written consent of person tested or subpoena.

Code section(s) analyzed

AZ Rev. Stat. §12-2801-4, §20-448.02

How genetic testing is defined

Two different definitions found. Section 12-2801 defines it as: "a test of a person's genes, genetic sequence, gene products or chromosomes for abnormalities or deficiencies, including carrier status, that (i) Are linked to physical or mental disorders or impairments. (ii) Indicate a susceptibility to any illness, disease, impairment or other disorder, whether physical or mental. (iii) Demonstrate genetic or chromosomal damage due to any environmental factor." This definition excludes paternity testing and forensic testing. Section 20-488.02(B)(2) defines genetic test as "an analysis of an individual's DNA, gene products or chromosomes that indicates a propensity for or susceptibility to illness, disease, impairment or other disorders, whether physical or mental, or that demonstrates genetic or chromosomal damage due to environmental factors, or carrier status for disease or disorder."

Is DNA defined as property or as confidential?

Defined as confidential in section 12-2802: "Except as otherwise provided in this article, genetic testing and information derived from genetic testing are confidential and considered privileged to the person tested...." Also, section 12-2804 states: "Information and records held by a state agency or a local health authority relating to genetic testing information are confidential and are exempt from the public copying and inspection requirements."

To whom does the law apply and what does it prohibit/restrict?

Any person who performs DNA analysis, or discloses the results of a DNA analysis without consent of the person tested or subpoena.

Exceptions

No exceptions found.

Penalties

No penalties found.

Would state law prohibit surreptitious genetic testing, in particular for purposes of paternity, ancestry, and identity?

Law would prohibit any person from surreptitious DNA analysis for health-related traits and from disclosing health-related genetic test results. It would not prohibit surreptitious paternity, identity, or ancestry testing since the definition of genetic testing is limited to health-related testing.

State laws pertaining to surreptitious DNA testing

Arkansas

Does the law restrict the collection or analysis of DNA or disclosure of results of analysis?

No relevant law identified.

State laws pertaining to surreptitious DNA testing

California

Does the law restrict the collection or analysis of DNA or disclosure of results of analysis?

Yes, disclosure of health-related genetic test results without written authorization is prohibited.

Code section(s) analyzed

Cal Civ. Code § 56.17; Cal Ins. Code §§ 742.405, 742.407, 10123.3, 10123.35, 10140, 10149

How genetic testing is defined

"Genetic characteristics" is defined as (1) "Any scientifically or medically identifiable gene or chromosome, or combination or alteration thereof, that is known to be a cause of a disease or disorder in a person or his or her offspring, or that is determined to be associated with a statistically increased risk of development of a disease or disorder, and that is presently not associated with any symptoms of any disease or disorder;" (2) "Inherited characteristics that may derive from the individual or family member, that are known to be a cause of a disease or disorder in a person or his or her offspring, or that are determined to be associated with a statistically increased risk of development of a disease or disorder, and that are presently not associated with any symptoms of any disease or disorder."

Is DNA defined as property or as confidential?

No.

To whom does the law apply and what does it prohibit/restrict?

The following provisions are found in separate sections of Cal. Law 10149.1: (1) "Any person who negligently discloses results of a test for a genetic characteristic to any third party in a manner that identifies or provides identifying characteristics of the person to whom the test result apply, except pursuant to a written authorization...;" (2) "Any person who willfully discloses the results of a test for a genetic characteristic to any third party in a manner that identifies or provides identifying characteristics of the person to whom the test result apply, except pursuant to a written authorization...;" (3) "Any person who willfully or negligently discloses the results of a test for a genetic characteristic to a third party in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to written authorization...that results in economic, bodily, or emotional harm to the subject of the test."

Exceptions

No exceptions found.

Penalties

Negligent disclosure assessed civil penalty not to exceed \$1000; Willful disclosure assessed a civil penalty \$1000-\$5000 plus court costs to test subject; If willful or negligent disclosure results in economic, bodily, or emotional harm to test subject, it is a misdemeanor punishable by fine not to exceed \$10,000.

Would state law prohibit surreptitious genetic testing, in particular for purposes of paternity, ancestry, and identity?

Law would prohibit unauthorized disclosure of health-related genetic test results, but would not prohibit surreptitious testing for non-health-related purposes because definition limited to health-related testing.

State laws pertaining to surreptitious DNA testing

Colorado

Does the law restrict the collection or analysis of DNA or disclosure of results of analysis?

Yes, in the context of proceedings regarding parentage.

Code section(s) analyzed

CO Rev. Stat. § 10-3-1104.7; §13-25-126

How genetic testing is defined

"Genetic testing means any laboratory test of human DNA, RNA, or chromosomes that is used to identify the presence or absence of alterations in genetic material which are associated with disease or illness." "Genetic testing" includes only tests that are direct measures of such alterations rather than indirect manifestations thereof. In the context of genetic tests to determine parentage, the term "genetic tests" is not defined but it is clear from context that it means tests for inherited characteristics to determine probability of parentage.

Is DNA defined as property or as confidential?

"Genetic information is the unique property of the individual to whom the information pertains"; "Information derived from genetic testing shall be confidential and privileged."

To whom does the law apply and what does it prohibit/restrict?

In the case of genetic tests to determine parentage: "Specimens and reports are confidential. An individual who intentionally releases an identifiable specimen of another individual for any purpose other than relevant to the proceeding regarding parentage without a court order or the written permission of the individual who furnished the specimen commits a class 1 misdemeanor." Also note limitations on use of genetic information in underwriting: "Any entity that receives information derived from genetic testing may not seek, use, or keep the information for any nontherapeutic purpose or for any underwriting purpose connected with the provision of health care insurance, group disability insurance, or long-term care insurance coverage." ("Entity" is defined as "any sickness and accident insurance company, health maintenance organization, nonprofit hospital, medical-surgical and health service corporation, or other entity that provides health care insurance, group disability insurance, or long-term care insurance coverage and is subject to the jurisdiction of the commissioner of insurance.")

Exceptions

Criminal investigations and prosecutions, including collection from convicts; newborn screening; court-ordered paternity; de-identified research.

Penalties

For entities: Damages or \$10,000 per violation and legal fees. For an individual who releases a specimen in a case of parentage testing: 6-18 months in prison and/or \$500 to \$5000.

Would state law prohibit surreptitious genetic testing, in particular for purposes of paternity, ancestry, and identity?

Yes, with limited exceptions. In the context of a court-ordered proceeding to establish parentage the law prohibits the intentional release of a specimen for any purpose not relevant to the proceeding without a court order or written permission of the person who furnished the specimen. Additionally, health insurance and related entities may not "seek, use, or keep" health-related genetic testing information for non-therapeutic purposes. Note that DNA is defined as property so laws of general applicability could potentially be interpreted to prohibit surreptitious testing.

State laws pertaining to surreptitious DNA testing

Connecticut

Does the law restrict the collection or analysis of DNA or disclosure of results of analysis?

No relevant law identified.

State laws pertaining to surreptitious DNA testing

Delaware

Does the law restrict the collection or analysis of DNA or disclosure of results of analysis?

Yes, law prohibits obtaining or retaining health-related genetic information without consent and restricts disclosure of information obtained through testing.

Code section(s) analyzed

DE Stat. §§ 12.2.1220 to 12.2.1227

How genetic testing is defined

(1) "'Genetic characteristic' means any inherited gene or chromosome, or alternation thereof, that is scientifically or medically believed to predispose an individual to a disease, disorder or syndrome, or to be associated with a statistically significant increased risk of development of a disease, disorder or syndrome." (2) "'Genetic information' means information about inherited genes or chromosomes, and of alterations thereof, whether obtained from an individual or family member, that is scientifically or medically believed to predispose an individual to disease, disorder or syndrome or believed to be associated with a statistically significant increased risk of development of a disease, disorder or syndrome." (3) "'Genetic test' means a test for determining the presence or absence of an inherited genetic characteristic in an individual, including tests of nucleic acids such as DNA, RNA, and mitochondrial DNA, chromosomes or proteins in order to identify a predisposing genetic characteristic associated with disease, disorder or syndrome."

Is DNA defined as property or as confidential?

No.

To whom does the law apply and what does it prohibit/restrict?

No person shall obtain or retain health-related genetic information about an individual without first obtaining informed consent from the individual. No person shall disclose the fact of testing or information gained from testing except under specified circumstances.

Exceptions

Consent not required for purposes of criminal prosecution; determining paternity; collecting DNA from convicts; determining identity of deceased individuals; de-identified research; newborn screening. Disclosure without consent permitted for criminal or death investigation or a criminal or juvenile justice proceeding or to protect the interests of an issuer in the detection or prevention of fraud, material misrepresentation, or material non-disclosure; to determine paternity; if authorized by order of a court of competent jurisdiction; if pursuant to the DNA analysis and data bank requirements (§ 4713 of Title 29); furnishing genetic information relating to a decedent for medical diagnosis of blood relatives of the decedent; identifying bodies; newborn screening; if authorized by federal law for the identification of persons; if by an insurer to an insurance regulatory authority.

Penalties

Willful retention: fine of not less than \$1,000 nor more than \$10,000. Willful obtaining: fine not less than \$5,000 nor more than \$50,000. Willful disclosure: fine not less than \$5,000 nor more than \$50,000 and liable for all actual damages, including damages for economic, bodily, or emotional harm which is proximately caused by the disclosure.

Would state law prohibit surreptitious genetic testing, in particular for purposes of paternity, ancestry, and identity?

Law would prohibit surreptitiously obtaining or retaining health-related genetic test or disclosing result of health-related test unless one of the exceptions applied. It is unclear whether surreptitious paternity testing would be restricted since the domestic relations laws, which address paternity establishment, does not specify who is authorized to order a genetic test. Since the definitions of genetic test and genetic information are limited to health-related, it would not prevent surreptitious testing or disclosure of ancestry or identity test results.

State laws pertaining to surreptitious DNA testing

District of Columbia

Does the law restrict the collection or analysis of DNA or disclosure of results of analysis?

No relevant law identified.

State laws pertaining to surreptitious DNA testing

Florida

Does the law restrict the collection or analysis of DNA or disclosure of results of analysis?

Yes, the law prohibits DNA analysis or receiving results of DNA analysis without consent of the person tested.

Code section(s) analyzed

FL Stat. § 760.40

How genetic testing is defined

"DNA analysis means the medical and biological examination and analysis of a person to identify the presence and composition of genes in that person's body. The term includes DNA typing and genetic testing."

Is DNA defined as property or as confidential?

"The results of such DNA analysis, whether held by a public or private entity, are the exclusive property of the person tested, are confidential, and may not be disclosed without the consent of the person tested."

To whom does the law apply and what does it prohibit/restrict?

Any person who performs DNA analysis or receives records, results, or findings of DNA analysis without consent of the person tested. Any such person receiving records, results, or findings of DNA analysis is required to provide notice to the person tested that the analysis was performed and whether the information is used in insurance, employment, financial, or educational context.

Exceptions

Purposes of criminal prosecution; determining paternity pursuant to specified provisions of statute; collecting DNA from convicts pursuant to specified provisions of statute.

Penalties

First degree misdemeanor (up to 1 year in jail and fine up to \$1000).

Would state law prohibit surreptitious genetic testing, in particular for purposes of paternity, ancestry, and identity?

Law would prohibit surreptitious analysis or disclosure. Note that DNA defined as property and as confidential so laws of general applicability could also be interpreted to prohibit surreptitious testing.

State laws pertaining to surreptitious DNA testing

Georgia

Does the law restrict the collection or analysis of DNA or disclosure of results of analysis?

Yes, the law prohibits the conduct of genetic testing without the prior written consent of the person tested.

Code section(s) analyzed

O.G.C.A. §§ 33-54-1 to 33-54-8

How genetic testing is defined

"Genetic testing means laboratory tests of human DNA or chromosomes for the purpose of identifying the presence or absence of inherited alterations in genetic material or genes which are associated with a disease or illness that is asymptomatic at the time of testing and that arises solely as a result of such abnormality in genes or genetic material."

Is DNA defined as property or as confidential?

"Genetic information is the unique property of the individual tested." "Information derived from genetic testing is confidential and privileged."

To whom does the law apply and what does it prohibit/restrict?

Genetic testing may only be conducted to obtain information for therapeutic or diagnostic purposes. Genetic testing may not be conducted without the prior written consent of the person to be tested. Any insurer that receives information derived from genetic testing may not use the information for any non-therapeutic purpose.

Exceptions

Information derived from genetic testing regarding the identity of any individual who is the subject of a criminal investigation or a criminal prosecution may be disclosed to appropriate legal authorities and used during an investigation without the consent of such individual; a research facility may conduct genetic testing and may use the information derived from genetic testing without consent for scientific research purposes so long as the identity of any individual tested is not disclosed to any third party; testing and disclosure provisions do not apply to certain insurance policies enumerated in statute.

Penalties

Violation by insurer is unfair trade practice subject to the provisions of Article 1 of Chapter 6 of this title (§ 33-54-8) An insurer is liable for damages to individual suffered as result of violation. Violation by "any other person" is unfair practice subject to the provisions of Part 2 of Article 15 of Chapter 1 of Title 10, the "Fair Business Practices Act of 1975." Any individual harmed as a result of a violation of this chapter shall have a cause of action against the person whose violation caused the harm.

Would state law prohibit surreptitious genetic testing, in particular for purposes of paternity, ancestry, and identity?

Yes. The law would appear to prohibit the conduct of genetic testing without consent for both health-related and non-health related purposes unless a specific exception applies. While the law is codified in the Insurance title of the Georgia Code, the language of the statute appears broader than the insurance context. Also note that genetic information is defined as property and as confidential so laws of general applicability may prohibit surreptitious testing.

State laws pertaining to surreptitious DNA testing

Hawaii

Does the law restrict the collection or analysis of DNA or disclosure of results of analysis?

No relevant law identified.

State laws pertaining to surreptitious DNA testing

Idaho

Does the law restrict the collection or analysis of DNA or disclosure of results of analysis?

No relevant law identified.

State laws pertaining to surreptitious DNA testing

Illinois

Does the law restrict the collection or analysis of DNA or disclosure of results of analysis?

Yes, no person may disclose results of health-related genetic test except to persons specifically enumerated in the statute.

Code section(s) analyzed

IL Stat. §§ 410 513/10 /15 /22 /30 /35 /40 /45

How genetic testing is defined

"Genetic testing means a test of a person's genes, gene products, or chromosomes for abnormalities or deficiencies, including carrier status, that (i) are linked to physical or mental disorders or impairments, (ii) indicate a susceptibility to illness, disease, impairment, or other disorders, whether physical or mental, or (iii) demonstrate genetic or chromosomal damage due to environmental factors."

Is DNA defined as property or as confidential?

"Genetic testing and information derived from genetic testing is confidential and privileged and may be released only to the individual tested and to persons specifically authorized" by the individual.

To whom does the law apply and what does it prohibit/restrict?

No person may disclose or be compelled to disclose the identity of any person upon whom a genetic test is performed or the results of a genetic test in a manner that permits identification of the subject of the test except to persons specifically enumerated in the statute. Also note that an insurer may not seek genetic information for use in connection with accident and health insurance, and may not use information derived from genetic testing for a non-therapeutic purpose.

Exceptions

A police officer may disclose for identification purposes information derived from legally obtained sample to law enforcement authorities conducting investigation or prosecution. The law does not restrict ordering of paternity testing by a court or family services department as part of a proceeding.

Penalties

Private right of action by "any person" aggrieved by violation of statute. \$1000 or actual damages for negligent disclosure; \$5000 or actual damages for intentional or reckless disclosure.

Would state law prohibit surreptitious genetic testing, in particular for purposes of paternity, ancestry, and identity?

Law would prohibit disclosure of health-related genetic test results except as authorized by statute. Non-health-related testing not covered by the law.

State laws pertaining to surreptitious DNA testing

Indiana

Does the law restrict the collection or analysis of DNA or disclosure of results of analysis?

No relevant law identified.

State laws pertaining to surreptitious DNA testing

Iowa

Does the law restrict the collection or analysis of DNA or disclosure of results of analysis?

Yes, but only in context of employment-related testing.

Code section(s) analyzed

IA Code § 729.6

How genetic testing is defined

Genetic test is "a test of a person's genes, gene products, or chromosomes, for abnormalities or deficiencies, including carrier status, that are linked to physical or mental disorders or impairments, or that indicate a susceptibility to illness, disease, impairment, or other disorders, whether physical or mental, or that demonstrate genetic or chromosomal damage due to environmental factors."

Is DNA defined as property or as confidential?

No.

To whom does the law apply and what does it prohibit/restrict?

An employer, agency, labor organization, licensing agency, or its employees, agents, or members shall not directly or indirectly: Solicit, require, or administer a genetic test to a person as a condition of employment, pre-employment application, labor organization membership, or licensure; affect the terms, conditions, or privileges of employment, pre-employment application, labor organization membership, or licensure; or terminate the employment, labor organization membership, or licensure of any person who obtains a genetic test. A person shall not sell to or interpret for an employer, employment agency, labor organization, or licensing agency, or its employees, agents, or members, a genetic test of an employee, labor organization member, or licensee, or of a prospective employee, member, or licensee unless employee requests or consents to testing in relation to workers compensation claim or exposure to toxic substance.

Exceptions

No exceptions found.

Penalties

A person who violates this section or who aids in the violation of this section is liable to an aggrieved employee, labor organization member, or licensee, or aggrieved prospective employee, member, or licensee, for affirmative relief including reinstatement or hiring, with or without back pay; membership; licensing; or any other equitable relief as the court deems appropriate, including attorney fees and court costs.

Would state law prohibit surreptitious genetic testing, in particular for purposes of paternity, ancestry, and identity?

No, except for health-related testing in the employment context. The law would not prohibit surreptitious testing outside the employment context or for non-health-related testing.

State laws pertaining to surreptitious DNA testing

Kansas

Does the law restrict the collection or analysis of DNA or disclosure of results of analysis?

No relevant law identified.

State laws pertaining to surreptitious DNA testing

Kentucky

Does the law restrict the collection or analysis of DNA or disclosure of results of analysis?

No relevant law identified.

State laws pertaining to surreptitious DNA testing

Louisiana

Does the law restrict the collection or analysis of DNA or disclosure of results of analysis?

Yes, disclosure of prenatal or postnatal genetic tests without consent prohibited.

Code section(s) analyzed

LA Rev. Stat. §§ 22:213.7, 23:302, 40:1299.6

How genetic testing is defined

(1) §§ 22:213.7: "Genetic test means any test for determining the presence or absence of genetic characteristics in an individual, including tests of nucleic acids, such as DNA, RNA, and mitochondrial DNA, chromosomes, or proteins in order to diagnose or identify a genetic characteristic."; "Genetic characteristic means any gene or chromosome, or alteration thereof, that is scientifically or medically believed to cause a disease, disorder, or syndrome, or to be associated with a statistically significant increased risk of development of a disease, disorder, or syndrome." (2) §§ 23:302 "'Genetic test' means the analysis of human DNA, RNA, chromosomes, and those proteins and metabolites used to detect heritable or somatic disease-related genotypes or karyotypes for clinical purposes. A genetic test must be generally accepted in the scientific and medical communities as being specifically determinative for the presence, absence, or mutation of a gene or chromosome in order to qualify under this definition." NOTE THESE DEFINITIONS ARE FOUND IN SECTION OF LAW DEALING WITH GENETIC DISCRIMINATION IN EMPLOYMENT/INSURANCE.

Is DNA defined as property or as confidential?

"With the exception of genetic tests specifically mandated to be reported by law, the results of any prenatal or postnatal genetic tests shall be confidential medical information and shall be excluded from reporting requirements. The results of such genetic tests shall become part of the medical record of the person tested and shall be confidential unless express written consent to their release is granted by the person tested." Note that this provision is found in the law dealing with newborn screening.

To whom does the law apply and what does it prohibit/restrict?

Law prohibits disclosure of prenatal or postnatal health-related genetic tests without consent.

Exceptions

For purposes of criminal investigation or prosecution; to determine paternity; to identify deceased individuals; de-identified research; newborn screening; "for the purposes of child protection investigations or neglect proceedings."

Penalties

Private right of action for damages, attorney fees, and court fees.

Would state law prohibit surreptitious genetic testing, in particular for purposes of paternity, ancestry, and identity?

Law would prohibit unauthorized disclosure of health-related prenatal and postnatal tests only.

State laws pertaining to surreptitious DNA testing

Maine

Does the law restrict the collection or analysis of DNA or disclosure of results of analysis?

No relevant law identified.

State laws pertaining to surreptitious DNA testing

Maryland

Does the law restrict the collection or analysis of DNA or disclosure of results of analysis?

No relevant law identified.

State laws pertaining to surreptitious DNA testing

Massachusetts

Does the law restrict the collection or analysis of DNA or disclosure of results of analysis?

Yes, law prohibits specified health-related entities from performing DNA analysis or disclosing results without consent.

Code section(s) analyzed

MA Stat. §§ 111:70G, Chapters 22e, 111, 93a, 151b 175, 176

How genetic testing is defined

“Genetic test, a test of human DNA, RNA, mitochondrial DNA, chromosomes or proteins for the purpose of identifying genes, inherited or acquired genetic abnormalities, or the presence or absence of inherited or acquired characteristics in genetic material.”

Is DNA defined as property or as confidential?

No.

To whom does the law apply and what does it prohibit/restrict?

Any facility, physician, or health care provider that performs DNA analysis or discloses results of a genetic test without consent of the person tested. Facility is defined as any hospital or institution subject to licensing by the Department of Health. Commercial genetic testing companies are prohibited from divulging genetic information without informed consent.

Exceptions

Collection from convicts; law enforcement official duties; hospital, laboratory, or physician with proper judicial order.

Penalties

Violation of unfair business practice statute.

Would state law prohibit surreptitious genetic testing, in particular for purposes of paternity, ancestry, and identity?

Law would prohibit surreptitious genetic analysis or disclosure by health care providers or facilities. Genetic test includes both health-related and non-health-related testing. The law would also prevent a commercial laboratory from disclosing test results without consent of person tested. Laboratory could be liable if did not receive proper consent of person tested. However, law does not prevent private individuals not named in statute from collecting, analyzing, or disclosing results of testing.

State laws pertaining to surreptitious DNA testing

Michigan

Does the law restrict the collection or analysis of DNA or disclosure of results of analysis?

Yes, law requires physician to obtain consent for pre-symptomatic or predictive genetic testing. Law prohibits disclosure of paternity test information obtained through the Paternity Act (MCL § 722.716a).

Code section(s) analyzed

MCL §§ 37.1201, 333.17020, 333.17520, 500.3407b, MCL § 722.716a

How genetic testing is defined

"Genetic test means the analysis of human DNA, RNA, chromosomes, and those proteins and metabolites used to detect heritable or somatic disease-related genotypes or karyotypes for clinical purposes." NOTE GENETIC TESTING NOT DEFINED UNDER THE PATERNITY ACT (CHAPTER 722).

Is DNA defined as property or as confidential?

No.

To whom does the law apply and what does it prohibit/restrict?

A physician cannot order a pre-symptomatic or predictive genetic test without consent of the person being tested; in the case of paternity testing, a person shall not disclose information obtained from genetic paternity testing that is authorized under law, and a contracting laboratory or other entity involved with the genetic paternity testing is required to protect the confidentiality of genetic testing material except as required for a paternity determination under the law. Also note that a hospital (or other state-certified health care corporation) cannot require an individual to undergo genetic testing nor disclose whether genetic testing has been conducted on an insurance applicant, and an employer cannot directly or indirectly acquire or have access to any genetic information about prospective employees or their family members.

Exceptions

De-identified research use.

Penalties

Violation of § 722.716a (Paternity Act) is a misdemeanor punishable by a fine of not more than \$5000. A second or subsequent violation of this section is a misdemeanor punishable by imprisonment for not more than one year or a fine of not more than \$10,000, or both.

Would state law prohibit surreptitious genetic testing, in particular for purposes of paternity, ancestry, and identity?

Law would prevent physician from ordering certain health-related genetic tests without consent. Law also restricts disclosure of paternity test results obtained through the Paternity Act (MCL § 722.716a). Law could be interpreted to prohibit laboratory from performing paternity testing unless authorized by law, but the scope of the law is unclear. Other than these restrictions, the law would not prevent surreptitious testing.

State laws pertaining to surreptitious DNA testing

Minnesota

Does the law restrict the collection or analysis of DNA or disclosure of results of analysis?

Yes, law prohibits collection of DNA sample, performance of DNA analysis, or disclosure of results of analysis without consent of person tested.

Code section(s) analyzed

MN Stat. § 13.386 sec 4

How genetic testing is defined

"Genetic information means information about an identifiable individual derived from the presence, absence, alteration, or mutation of a gene, or the presence or absence of a specific DNA or RNA marker, which has been obtained from an analysis of: (1) the individual's biological information or specimen; or (2) the biological information or specimen of a person to whom the individual is related."

Is DNA defined as property or as confidential?

No.

To whom does the law apply and what does it prohibit/restrict?

Any government entity or other person who collects a DNA sample, performs DNA analysis, or discloses the results of a DNA analysis without consent of the person tested. Government entity means a state agency, statewide system, or political subdivision. Person means any individual, partnership, corporation, association, business trust, or a legal representative of an organization.

Exceptions

Unless otherwise expressly provided by law.

Penalties

No penalties provided in statute.

Would state law prohibit surreptitious genetic testing, in particular for purposes of paternity, ancestry, and identity?

Law would prohibit surreptitious collection, analysis, and disclosure. Would cover both individual who collects and discloses and laboratory that performs analysis if proper consent not obtained.

State laws pertaining to surreptitious DNA testing

Mississippi

Does the law restrict the collection or analysis of DNA or disclosure of results of analysis?

No relevant law identified.

State laws pertaining to surreptitious DNA testing

Missouri

Does the law restrict the collection or analysis of DNA or disclosure of results of analysis?

Yes, disclosure of health-related test results prohibited without written authorization.

Code section(s) analyzed

MO Stat. §§ 375.1300 to 375.1309

How genetic testing is defined

"Genetic test" is "a laboratory test of human deoxyribonucleic acid (DNA) or ribonucleic acid (RNA) used to identify the presence or absence of inherited alterations in the DNA or RNA which cause predisposition to disease or illness."

Is DNA defined as property or as confidential?

No.

To whom does the law apply and what does it prohibit/restrict?

Any person who, in the ordinary course of business, practice of a profession or rendering of a service, creates, stores, receives or furnishes genetic information, shall hold such information as confidential medical records and shall not disclose such genetic information except pursuant to written authorization of the person to whom such information pertains or to that person's authorized representative.

Exceptions

De-identified research use; "pursuant to legal or regulatory process" (MO Stat. §§ 375.1309); body identification.

Penalties

Level two violation under 374.049, RSMo, \$1000 for each violation.

Would state law prohibit surreptitious genetic testing, in particular for purposes of paternity, ancestry, and identity?

The law would prohibit disclosure of health-related genetic information without authorization. Law does not address non-health-related testing.

State laws pertaining to surreptitious DNA testing

Montana

Does the law restrict the collection or analysis of DNA or disclosure of results of analysis?

No. However, use of genetic information by insurers or employers is restricted.

Code section(s) analyzed

MT Code Anno. §§ 33-18-901

How genetic testing is defined

"Genetic test means a test used to diagnose a pre-symptomatic genetic factor, including analysis of human deoxyribonucleic acid or ribonucleic acid, chromosomes, proteins, or metabolites."

Is DNA defined as property or as confidential?

No.

To whom does the law apply and what does it prohibit/restrict?

Law restricts use of genetic information by employers and insurers. Prohibits insurers from seeking genetic information for non-therapeutic purposes.

Exceptions

If required by law to establish parentage; for newborn screening; in connection with a criminal investigation or prosecution; for remains identification.

Penalties

No penalties found.

Would state law prohibit surreptitious genetic testing, in particular for purposes of paternity, ancestry, and identity?

The law would not prohibit surreptitious testing.

State laws pertaining to surreptitious DNA testing

Nebraska

Does the law restrict the collection or analysis of DNA or disclosure of results of analysis?

Yes, law requires physician to obtain consent for pre-symptomatic or predictive genetic testing. Law prohibits disclosure of information obtained from genetic paternity testing performed pursuant to paternity testing law.

Code section(s) analyzed

R.R.S. Neb. §§ 43-1414-43-1418, 44-7,100, 44-6916, 48-236, 71-1,104.01

How genetic testing is defined

"Genetic test means the analysis of human DNA, RNA, chromosomes, epigenetic status, and those tissues, proteins, and metabolites used to detect heritable or somatic disease-related genotypes or karyotypes for clinical purposes. Tests of tissues, proteins, and metabolites are included only when generally accepted in the scientific and medical communities as being specifically determinative of a heritable or somatic disease-related genetic condition." "Predictive genetic test means a genetic test for an otherwise undetectable genotype or karyotype relating to the risk for developing a genetically related disease or disability, the results of which can be used to substitute a patient's prior risk based on population data or family history with a risk based on genotype or karyotype." NOTE THAT THESE DEFINITIONS DO NOT APPLY TO SECTION ON PATERNITY TESTING, WHICH IS CLEARLY INTENDED TO INCLUDE GENETIC TESTING TO ESTABLISH PATERNITY.

Is DNA defined as property or as confidential?

No.

To whom does the law apply and what does it prohibit/restrict?

Physician cannot order a pre-symptomatic genetic test without consent of person being tested. A person shall not disclose information obtained from genetic paternity testing that is performed pursuant to provisions of law dealing with parental determination and paternity testing. A testing laboratory is required to protect the confidentiality of genetic testing material, except as required for a paternity determination pursuant to laws authorizing testing for this purpose. A person shall not buy, sell, transfer, or offer genetic testing material obtained under laws dealing with parental determination and paternity determination.

Exceptions

No exceptions found.

Penalties

Violation of paternity testing provisions is Class IV misdemeanor for the first offense and a Class III misdemeanor for the second or subsequent offense.

Would state law prohibit surreptitious genetic testing, in particular for purposes of paternity, ancestry, and identity?

Law could be interpreted to prohibit disclosure of paternity test without consent, but this may be limited to court-ordered paternity test. Additionally, a person who misappropriated a genetic testing sample obtained for paternity testing (by buying, selling, transferring, or offering it) which was then tested for another purpose would be in violation of the statute. Law also prohibits physician from performing pre-symptomatic genetic test without consent.

State laws pertaining to surreptitious DNA testing

Nevada

Does the law restrict the collection or analysis of DNA or disclosure of results of analysis?

Yes, law prohibits obtaining, retaining, or disclosing health-related genetic information without consent.

Code section(s) analyzed

NV Rev. Stat. Ann. §§ 613.345, 629.101 to 629.201

How genetic testing is defined

"Genetic test means a test, including a laboratory test that uses deoxyribonucleic acid extracted from the cells of a person or a diagnostic test, to determine the presence of abnormalities or deficiencies, including carrier status, that: 1. Are linked to physical or mental disorders or impairments; or 2. Indicate a susceptibility to illness, disease, impairment or any other disorder, whether physical or mental." "Genetic information means any information that is obtained from a genetic test."

Is DNA defined as property or as confidential?

No.

To whom does the law apply and what does it prohibit/restrict?

Any person who obtains, retains, or discloses genetic information without consent of the person tested.

Exceptions

Purposes of criminal investigation; by court order; otherwise authorized by state or federal law or regulation; paternity pursuant to specified provisions of statute; identification of deceased individuals; newborn screening.

Penalties

Violation is a misdemeanor. An individual subject to disclosure may bring civil action for recovery of damages, costs, and attorney fees.

Would state law prohibit surreptitious genetic testing, in particular for purposes of paternity, ancestry, and identity?

The law would prohibit surreptitious health-related testing and disclosure of genetic information obtained from such testing by any person. The law would not prohibit surreptitious testing for non-health-related purposes, given the narrow definition of genetic testing.

State laws pertaining to surreptitious DNA testing

New Hampshire

Does the law restrict the collection or analysis of DNA or disclosure of results of analysis?

Yes, law prohibits disclosure of genetic test results without consent. Also prohibits nonconsensual analysis of New Hampshire resident or person within the state.

Code section(s) analyzed

NH Stat. §§ 141-H:1 to 141-H:6

How genetic testing is defined

“Genetic testing’ means a test, examination, or analysis which is generally accepted in the scientific and medical communities for the purpose of identifying the presence, absence, or alteration of any gene or chromosome, and any report, interpretation, or evaluation of such a test, examination, or analysis, but excludes any otherwise lawful test, examination, or analysis that is undertaken for the purpose of determining whether an individual meets reasonable functional standards for a specific job or task.”

Is DNA defined as property or as confidential?

No.

To whom does the law apply and what does it prohibit/restrict?

Any person who discloses results of genetic testing without consent of the person tested. Also prohibits nonconsensual analysis of sample of anyone within the state and on New Hampshire residents outside the state based on sample collected within the state.

Exceptions

Criminal investigations and prosecutions; medical examiner’s needs; newborn screening; court-ordered paternity.

Penalties

Private right of action for damages.

Would state law prohibit surreptitious genetic testing, in particular for purposes of paternity, ancestry, and identity?

Law would prohibit disclosure of genetic information obtained pursuant to surreptitious analysis. It would also prohibit surreptitious analysis, but only on a person located in New Hampshire or a New Hampshire resident anywhere if specimen collected in New Hampshire.

State laws pertaining to surreptitious DNA testing

New Jersey

Does the law restrict the collection or analysis of DNA or disclosure of results of analysis?

Yes, law prohibits obtaining genetic information, performing DNA analysis, or disclosing results without consent.

Code section(s) analyzed

NJ Stat. §§ 141-H:1 to 141-H:6

How genetic testing is defined

Not defined.

Is DNA defined as property or as confidential?

"Genetic information is personal information that should not be collected, retained or disclosed without the individual's authorization."

To whom does the law apply and what does it prohibit/restrict?

Any person who obtains genetic information, performs DNA analysis, or discloses the results of a DNA analysis without consent of the person tested.

Exceptions

Collection from convicts; official law enforcement; identification of missing/deceased persons; court-ordered paternity testing; newborn screening; de-identified research.

Penalties

Violation is punishable by fine of \$1000, a prison term of six months, or both. Willful disclosure is punished by a fine of \$5000, a prison term of one year, or both. Any person who discloses genetic information is liable for damages.

Would state law prohibit surreptitious genetic testing, in particular for purposes of paternity, ancestry, and identity?

The law would prohibit surreptitiously "obtaining genetic information," which could be interpreted to include collection of DNA sample. It also would prohibit surreptitiously analyzing sample and disclosing result. Note that "DNA analysis" and "genetic information" are not defined.

State laws pertaining to surreptitious DNA testing

New Mexico

Does the law restrict the collection or analysis of DNA or disclosure of results of analysis?

Yes, law restricts collection, testing, and disclosure.

Code section(s) analyzed

NM Stat. Ann. §§ 24-21-1 to 24-21-7

How genetic testing is defined

"Genetic testing means a test of an individual's DNA, ribonucleic acid, chromosomes or proteins, including carrier status, that are linked with physical or mental disorders, impairments or genetic characteristics or that indicate that an individual may be predisposed to an illness, disease, impairment or other disorder." "Genetic information means information about the genetic makeup of a person or members of a person's family, including information resulting from genetic testing, genetic analysis, DNA composition, participation in genetic research or use of genetic services."

Is DNA defined as property or as confidential?

No.

To whom does the law apply and what does it prohibit/restrict?

Any person who collects, obtains, or retains genetic information or samples for genetic analysis or transmits or uses genetic information without consent of the person tested.

Exceptions

For purposes of criminal investigation by law enforcement; for purposes of maintaining a DNA database for law enforcement; to determine paternity; to identify deceased individuals; by court order; for emergency medical treatment; de-identified research; newborn screening.

Penalties

Private right of action for damages or \$5000, attorney fees and court costs.

Would state law prohibit surreptitious genetic testing, in particular for purposes of paternity, ancestry, and identity?

The law would prohibit surreptitiously obtaining genetic information, analyzing sample and disclosing result. The scope of genetic information appears to extend beyond health-related testing because it includes "DNA composition."

State laws pertaining to surreptitious DNA testing

New York

Does the law restrict the collection or analysis of DNA or disclosure of results of analysis?

Yes, law prohibits performing or disclosing results of a genetic test without consent.

Code section(s) analyzed

NY Stat. § 79-1

How genetic testing is defined

"Genetic test shall mean any laboratory test of human DNA, chromosomes, genes, or gene products to diagnose the presence of a genetic variation linked to a predisposition to a genetic disease or disability in the individual or the individual's offspring; such term shall also include DNA profile analysis."

Is DNA defined as property or as confidential?

No.

To whom does the law apply and what does it prohibit/restrict?

Any person who performs or discloses results of a genetic test without consent of the person tested.

Exceptions

De-identified research; by court order; newborn screening.

Penalties

Violation is a misdemeanor punishable by up to \$5000 or up to 90 days imprisonment.

Would state law prohibit surreptitious genetic testing, in particular for purposes of paternity, ancestry, and identity?

The law prohibits surreptitious testing or disclosure of results. Since "DNA profile analysis" is included in the definition of a genetic test, this would apply to non-health-related testing such as ancestry and paternity.

State laws pertaining to surreptitious DNA testing

North Carolina

Does the law restrict the collection or analysis of DNA or disclosure of results of analysis?

No relevant law identified.

State laws pertaining to surreptitious DNA testing

North Dakota

Does the law restrict the collection or analysis of DNA or disclosure of results of analysis?

Yes, law prohibits disclosure of health-related genetic information.

Code section(s) analyzed

ND Cent. Code, §§ 12.1-13-01, 14-20-02 to 14-20-35, 23-01.3-01-23-01.3-09

How genetic testing is defined

"Genetic testing" means "an analysis of genetic markers to exclude or identify a man as the father or a woman as the mother of a child" "Protected health information" means "any information, including genetic information, demographic information, and fluid or tissue samples collected from an individual, diagnostic and test results... which: a. Is created or received by a health care provider, health researcher, health plan, health oversight authority, public health authority, employer, health or life insurer, school or university; and b. (1) Relates to the past, present, or future physical or mental health or condition of an individual... and (2) (a) Identifies an individual; or (b) With respect to which there is a reasonable basis to believe that the information can be used to identify an individual."

Is DNA defined as property or as confidential?

No.

To whom does the law apply and what does it prohibit/restrict?

Any person who knowingly discloses protected health information, including genetic information, except as authorized by law. An individual who knowingly releases an identifiable specimen of another individual for any purpose other than that relevant to the proceeding regarding parentage without a court order or the written permission of the individual who furnished the specimen.

Exceptions

Disclosure of protected health information permitted for specified public health purposes; for law enforcement purposes; in emergency situations; to public health authority under specified circumstances. (NOTE THIS PROVISION APPEARS TO APPLY ONLY TO PUBLIC SERVANTS).

Penalties

Unauthorized disclosure of protected health information is class A misdemeanor. Release of identifiable specimen for purpose other than determination of parentage is a Class C felony.

Would state law prohibit surreptitious genetic testing, in particular for purposes of paternity, ancestry, and identity?

Law prohibits disclosure of health-related genetic testing information. Law also prohibits release of identifiable DNA specimen, but penalty appears to apply only to public servants. Law does not otherwise restrict surreptitious testing.

State laws pertaining to surreptitious DNA testing

Ohio

Does the law restrict the collection or analysis of DNA or disclosure of results of analysis?

No relevant law identified.

State laws pertaining to surreptitious DNA testing

Oklahoma

Does the law restrict the collection or analysis of DNA or disclosure of results of analysis?

No relevant law identified.

State laws pertaining to surreptitious DNA testing

Oregon

Does the law restrict the collection or analysis of DNA or disclosure of results of analysis?

Yes, law prohibits collection, analysis, and disclosure without consent.

Code section(s) analyzed

OR Stat. § 192.531

How genetic testing is defined

“Genetic test’ means a test for determining the presence or absence of genetic characteristics in an individual or the individual’s blood relatives, including tests of nucleic acids such as DNA, RNA and mitochondrial DNA, chromosomes or proteins in order to diagnose or determine a genetic characteristic.”

Is DNA defined as property or as confidential?

"Genetic information is uniquely private and personal information that generally should not be collected, retained or disclosed without the individual’s authorization."

To whom does the law apply and what does it prohibit/restrict?

Any person who collects a DNA sample, performs DNA analysis, or discloses the results of a DNA analysis without consent of the person tested.

Exceptions

Law enforcement; de-identified research; body identification; newborn screening; paternity; deceased individuals.

Penalties

Class A misdemeanor and private right of action for damages.

Would state law prohibit surreptitious genetic testing, in particular for purposes of paternity, ancestry, and identity?

Law would prohibit surreptitious collection, testing, or disclosure of results for both health-related and non-health-related genetic testing.

State laws pertaining to surreptitious DNA testing

Pennsylvania

Does the law restrict the collection or analysis of DNA or disclosure of results of analysis?

No relevant law identified.

State laws pertaining to surreptitious DNA testing

Rhode Island

Does the law restrict the collection or analysis of DNA or disclosure of results of analysis?

No relevant law identified.

State laws pertaining to surreptitious DNA testing

South Carolina

Does the law restrict the collection or analysis of DNA or disclosure of results of analysis?

Yes, law prohibits health-related genetic testing and disclosure of genetic information without consent.

Code section(s) analyzed

SC Code Ann §§ 38-93-10 to 38-93-60

How genetic testing is defined

Genetic test limited to health-related test, but genetic information is not: "Genetic test means a laboratory test or other scientifically or medically accepted procedure for determining the presence or absence of genetic characteristics in an individual." "'Genetic characteristic' means any scientifically or medically identifiable gene or chromosome, or alteration thereof, which is known to be a cause of disease or disorder, or determined to be associated with a statistically increased risk of development of a disease or disorder and which is asymptomatic of any disease or disorder..." "Genetic information' means information about genes, gene products, or genetic characteristics derived from an individual or a family member of the individual."

Is DNA defined as property or as confidential?

No.

To whom does the law apply and what does it prohibit/restrict?

Genetic information must be confidential may not be disclosed without consent. It is unlawful to perform a genetic test without written informed consent.

Exceptions

Purposes of criminal investigations by law enforcement; for body identification; court-ordered paternity testing; de-identified research; by court order.

Penalties

Violation is unfair trade and subject to civil penalty not exceeding \$5000 per violation. Person injured by violation may seek remedies in court.

Would state law prohibit surreptitious genetic testing, in particular for purposes of paternity, ancestry, and identity?

This law prohibits surreptitious health-related testing without consent. The law could also be interpreted to prohibit disclosure of non-health-related genetic information (e.g., paternity, ancestry) but the intended scope of the law is not clear. Genetic test is defined as including only health-related testing, and it is unlawful to perform a genetic test without the consent of the person tested. However, genetic information is defined more broadly to include information derived from genes, which would include paternity and ancestry information. Genetic information must be kept confidential but the law does not specify who must keep it confidential. It could be read as applying only to insurers, since the provision is contained in the insurance provisions of the statute, or it could be interpreted to include anyone who holds genetic information.

State laws pertaining to surreptitious DNA testing

South Dakota

Does the law restrict the collection or analysis of DNA or disclosure of results of analysis?

Yes, law prohibits performing health-related predictive genetic test without consent.

Code section(s) analyzed

SD Codified Laws §§ 58-1-24, 58-1-25, 34-14-21, 34-14-22

How genetic testing is defined

"Genetic test" is "a test of human DNA, RNA, chromosomes, or genes performed in order to identify the presence or absence of an inherited variation, alteration, or mutation which is associated with predisposition to disease, illness, impairment, or other disorder." "Predictive genetic test" is "a genetic test performed for the purpose of predicting the future probability that the person tested will develop a genetically related disease or disability."

Is DNA defined as property or as confidential?

No.

To whom does the law apply and what does it prohibit/restrict?

No person may order or perform a predictive genetic test without first obtaining the written, informed consent of the person to be tested.

Exceptions

For purposes of criminal investigations or court order.

Penalties

No penalties found.

Would state law prohibit surreptitious genetic testing, in particular for purposes of paternity, ancestry, and identity?

The law would prohibit health-related predictive genetic testing without consent but would not otherwise prohibit surreptitious genetic testing.

State laws pertaining to surreptitious DNA testing

Tennessee

Does the law restrict the collection or analysis of DNA or disclosure of results of analysis?

No relevant law identified.

State laws pertaining to surreptitious DNA testing

Texas

Does the law restrict the collection or analysis of DNA or disclosure of results of analysis?

Yes, law restricts disclosure of health-related test results and release of a specimen obtained for parentage determination.

Code section(s) analyzed

TX Ins. Code §§ 546.001 to 546.003, 546.051 to 546.054, 546.101 to 546.104, 546.151, 546.152, TX Lab. Code §§ 21.402, 21.403, 21.4031 TX Fam. Code (2003) §§ 160.102, 160.511, TX Occ. Code § 58.102

How genetic testing is defined

"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 predisposition for: (i) developing a clinically recognized disease, disorder, or syndrome; or (ii) being a carrier of a clinically recognized disease, disorder, or syndrome." "Genetic testing" means an analysis of an individual's genetic markers to exclude or identify a man as the father of a child or a woman as the mother of a child.

Is DNA defined as property or as confidential?

Genetic information is confidential and privileged regardless of the source of the information.

To whom does the law apply and what does it prohibit/restrict?

A person or entity that discloses genetic information about an individual after receipt without authorization from that individual; a person who intentionally releases an identifiable specimen of another person for any purpose not relevant to a parentage proceeding and without a court order or the written permission of the person who furnished the specimen.

Exceptions

If authorized under criminal law; by court order; to establish paternity in accordance with law; of decedent for medical diagnosis of relatives; for actuarial or research studies if individual could not be identified and materials destroyed as soon as reasonably practicable.

Penalties

Violation will result in a cease and desist order and may be subject to an administrative penalty. Violation of parentage provision is Class A misdemeanor.

Would state law prohibit surreptitious genetic testing, in particular for purposes of paternity, ancestry, and identity?

Law prohibits disclosure of health-related information without consent. Law prohibits release of a specimen obtained for a parentage proceeding for any unauthorized purpose. Law does not otherwise prohibit surreptitious testing.

State laws pertaining to surreptitious DNA testing

Utah

Does the law restrict the collection or analysis of DNA or disclosure of results of analysis?

No relevant law identified.

State laws pertaining to surreptitious DNA testing

Vermont

Does the law restrict the collection or analysis of DNA or disclosure of results of analysis?

Yes, law restricts release of bodily materials for analysis and analysis for health-related purpose without consent.

Code section(s) analyzed

18 V.S.A. §§ 9331-9335

How genetic testing is defined

"Genetic testing means a test, examination or analysis that is diagnostic or predictive of a particular heritable disease or disorder and is of: (i) a human chromosome or gene; (ii) human DNA or RNA; or (iii) a human genetically encoded protein."

Is DNA defined as property or as confidential?

No.

To whom does the law apply and what does it prohibit/restrict?

No genetic testing shall be performed on any individual or body parts of any individual nor shall any bodily materials be released for purposes of genetic testing without the prior written authorization and informed consent of the individual to be tested.

Exceptions

To establish parentage; newborn screening; criminal investigation or prosecution; remains identification by the chief medical examiner or designee; forensic DNA database; medical research.

Penalties

Intentional violation of discrimination provisions is subject to imprisonment not more than one year or fine up to \$10,000 or both, as well as civil action for damages. Violation of unauthorized testing provision subject to civil action for damages.

Would state law prohibit surreptitious genetic testing, in particular for purposes of paternity, ancestry, and identity?

Surreptitious genetic testing by any person for health-related purposes would be prohibited. Definition of genetic test would not encompass non-health-related testing.

State laws pertaining to surreptitious DNA testing

Virginia

Does the law restrict the collection or analysis of DNA or disclosure of results of analysis?

No relevant law identified.

State laws pertaining to surreptitious DNA testing

Washington

Does the law restrict the collection or analysis of DNA or disclosure of results of analysis?

Yes, provider cannot release information derived from patient's DNA without consent and no person may release sample obtained pursuant to parentage proceeding.

Code section(s) analyzed

Rev. Code Wash. §§ 49.44.180, 26.26.450, 70.02-005 to 70.02.010, 70.02.070

How genetic testing is defined

"Genetic information . . . is information about inherited characteristics that can be derived from a DNA-based or other laboratory test, family history, or medical examination." "Genetic testing" means "an analysis of genetic markers only to exclude or identify a man as the father or a woman as the mother of a child."

Is DNA defined as property or as confidential?

Health care information, including information derived from a patient's DNA, is personal and sensitive information.

To whom does the law apply and what does it prohibit/restrict?

Provider may not disclose health care information, including information derived from a person's DNA, without authorization. An individual who intentionally releases an identifiable specimen of another individual for any purpose other than that relevant to a parentage proceeding without a court order or the written permission of the individual who furnished the specimen. Also note that no person can require genetic testing as condition of employment.

Exceptions

No exceptions found.

Penalties

Unauthorized disclosure of health care information subject to civil remedies. Intentional release of identifiable specimen for other than parentage proceeding is gross misdemeanor punishable by imprisonment up to one year and/or up to \$5000 fine.

Would state law prohibit surreptitious genetic testing, in particular for purposes of paternity, ancestry, and identity?

Law would prohibit a provider from disclosing health-related genetic test results without consent. Law would also prohibit release of specimen obtained pursuant to parentage proceeding without court order or consent. Law would not otherwise restrict surreptitious testing.

State laws pertaining to surreptitious DNA testing

West Virginia

Does the law restrict the collection or analysis of DNA or disclosure of results of analysis?

No relevant law identified.

State laws pertaining to surreptitious DNA testing

Wisconsin

Does the law restrict the collection or analysis of DNA or disclosure of results of analysis?

Yes, but only in the context of employment-related testing.

Code section(s) analyzed

WI Stat. §§ 111.32, 111.372, 631.89

How genetic testing is defined

"Genetic testing means a test of a person's genes, gene products or chromosomes, for abnormalities or deficiencies, including carrier status, that are linked to physical or mental disorders or impairments, or that indicate a susceptibility to illness, disease, impairment or other disorders, whether physical or mental, or that demonstrate genetic or chromosomal damage due to environmental factors."

Is DNA defined as property or as confidential?

No.

To whom does the law apply and what does it prohibit/restrict?

No person may sell to or interpret for an employer, labor organization, employment agency or licensing agency a genetic test of an employee, labor organization member or licensee or of a prospective employee, labor organization member or licensee without that person's consent.

Exceptions

No exceptions found.

Penalties

Violation of disclosure prohibition is a Class B misdemeanor.

Would state law prohibit surreptitious genetic testing, in particular for purposes of paternity, ancestry, and identity?

The law prohibits any person from selling to or interpreting for an employer a health-related genetic test of an employee. Law would not otherwise prohibit surreptitious testing.

State laws pertaining to surreptitious DNA testing

Wyoming

Does the law restrict the collection or analysis of DNA or disclosure of results of analysis?

Yes. In the context of court-ordered paternity testing, no testing for purpose other than paternity determination may be conducted without written consent.

Code section(s) analyzed

WY Stat. §§ 14-2-402, 14-2-710

How genetic testing is defined

In context of paternity testing: "genetic information" means "any information about genes, gene products or inherited characteristics that may derive from the individual or a family member, including, but not limited to, information: (i) Regarding carrier status; (ii) Regarding an increased likelihood of future disease or increased sensitivity to any substance; (iii) Derived from laboratory tests that identify mutations in specific genes or chromosomes, physical medical examinations, family histories, requests for genetic services or counseling, tests of gene products and direct analysis of genes or chromosomes." "Genetic testing" means "an analysis of genetic markers to exclude or identify a man as the father or a woman as the mother of a child. The term includes an analysis of one (1) or a combination of the following: (A) Deoxyribonucleic acid; and (B) Blood-group antigens, red-cell antigens, human-leukocyte antigens, serum enzymes, serum proteins or red-cell enzymes.

Is DNA defined as property or as confidential?

"All information obtained from identifiable genetic material submitted or used for determination of paternity shall be confidential and used solely for the purposes of determining paternity, unless individual identifiers are removed from the data used for purposes other than establishing paternity."

To whom does the law apply and what does it prohibit/restrict?

Any person who releases "any information obtained in paternity testing without the written consent of the individual from whom the genetic material is obtained to anyone not directly involved in the paternity determination" without consent of the person tested or subpoena. Any person who conducts testing on "any identifiable genetic material for purposes other than paternity determination without the written consent of the individual from whom the genetic material is obtained."

Exceptions

No exceptions found.

Penalties

Violation is a misdemeanor punishable by up to \$1000 or up to one year imprisonment.

Would state law prohibit surreptitious genetic testing, in particular for purposes of paternity, ancestry, and identity?

Provision prohibiting testing of genetic material without consent other than for paternity determination could be interpreted to preclude surreptitious collection of sample for paternity testing, as well as testing for purposes beyond paternity of a sample that was collected to determine paternity. However, this provision could also be interpreted to apply only to court-ordered paternity testing and not to paternity testing done without a court order.