

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.