

## 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.