

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.