

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.