

## 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.