

State laws pertaining to surreptitious DNA testing

New Mexico

Does the law restrict the collection or analysis of DNA or disclosure of results of analysis?

Yes, law restricts collection, testing, and disclosure.

Code section(s) analyzed

NM Stat. Ann. §§ 24-21-1 to 24-21-7

How genetic testing is defined

"Genetic testing means a test of an individual's DNA, ribonucleic acid, chromosomes or proteins, including carrier status, that are linked with physical or mental disorders, impairments or genetic characteristics or that indicate that an individual may be predisposed to an illness, disease, impairment or other disorder." "Genetic information means information about the genetic makeup of a person or members of a person's family, including information resulting from genetic testing, genetic analysis, DNA composition, participation in genetic research or use of genetic services."

Is DNA defined as property or as confidential?

No.

To whom does the law apply and what does it prohibit/restrict?

Any person who collects, obtains, or retains genetic information or samples for genetic analysis or transmits or uses genetic information without consent of the person tested.

Exceptions

For purposes of criminal investigation by law enforcement; for purposes of maintaining a DNA database for law enforcement; to determine paternity; to identify deceased individuals; by court order; for emergency medical treatment; de-identified research; newborn screening.

Penalties

Private right of action for damages or \$5000, attorney fees and court costs.

Would state law prohibit surreptitious genetic testing, in particular for purposes of paternity, ancestry, and identity?

The law would prohibit surreptitiously obtaining genetic information, analyzing sample and disclosing result. The scope of genetic information appears to extend beyond health-related testing because it includes "DNA composition."