

State laws pertaining to surreptitious DNA testing

South Carolina

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

Yes, law prohibits health-related genetic testing and disclosure of genetic information without consent.

Code section(s) analyzed

SC Code Ann §§ 38-93-10 to 38-93-60

How genetic testing is defined

Genetic test limited to health-related test, but genetic information is not: "Genetic test means a laboratory test or other scientifically or medically accepted procedure for determining the presence or absence of genetic characteristics in an individual." "'Genetic characteristic' means any scientifically or medically identifiable gene or chromosome, or alteration thereof, which is known to be a cause of disease or disorder, or determined to be associated with a statistically increased risk of development of a disease or disorder and which is asymptomatic of any disease or disorder..." "'Genetic information' means information about genes, gene products, or genetic characteristics derived from an individual or a family member of the individual."

Is DNA defined as property or as confidential?

No.

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

Genetic information must be confidential may not be disclosed without consent. It is unlawful to perform a genetic test without written informed consent.

Exceptions

Purposes of criminal investigations by law enforcement; for body identification; court-ordered paternity testing; de-identified research; by court order.

Penalties

Violation is unfair trade and subject to civil penalty not exceeding \$5000 per violation. Person injured by violation may seek remedies in court.

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

This law prohibits surreptitious health-related testing without consent. The law could also be interpreted to prohibit disclosure of non-health-related genetic information (e.g., paternity, ancestry) but the intended scope of the law is not clear. Genetic test is defined as including only health-related testing, and it is unlawful to perform a genetic test without the consent of the person tested. However, genetic information is defined more broadly to include information derived from genes, which would include paternity and ancestry information. Genetic information must be kept confidential but the law does not specify who must keep it confidential. It could be read as applying only to insurers, since the provision is contained in the insurance provisions of the statute, or it could be interpreted to include anyone who holds genetic information.