

TITLE 39
HEALTH AND SAFETY

CHAPTER 83
GENETIC TESTING PRIVACY ACT

39-8301. SHORT TITLE. This chapter shall be known and may be cited as the "Genetic Testing Privacy Act."

[39-8301, added 2006, ch. 293, sec. 1, p. 904.]

39-8302. DEFINITIONS. As used in this chapter:

(1) "Blood relative" means a person's biologically related parent, grandparent, child, grandchild, sibling, uncle, aunt, nephew, niece or first cousin.

(2) "DNA" means deoxyribonucleic acid, ribonucleic acid and chromosomes which may be analyzed to detect heritable diseases or conditions, including the identification of carriers, predicting risk of disease, or establishing a clinical diagnosis.

(3) "DNA sample" means any human biological specimen from which DNA can be extracted, or DNA extracted from such specimen.

(4) "Employer" means any person, partnership, limited liability company, association, corporation, labor organization, employment agency or nonprofit entity that employs five (5) or more persons including relatives, and including the legislative, executive and judicial branches of state government; any county, city, or any other political subdivision of the state; or any other separate unit of state or local government.

(5) "Genetic analysis" or "genetic test" means the testing or analysis of an identifiable individual's DNA that results in information that is derived from the presence, absence, alteration or mutation of an inherited gene or genes, or the presence or absence of a specific DNA marker or markers. "Genetic analysis" or "genetic test" does not mean:

- (a) A routine physical examination;
- (b) A routine chemical, blood or urine analysis;
- (c) A test to identify the presence of drugs or HIV infection; or
- (d) A test performed due to the presence of signs, symptoms or other manifestations of a disease, illness, impairment or other disorder.

(6) "Individual" means the person from whose body the DNA sample originated.

(7) "Person" means any person, organization or entity other than the individual.

(8) "Private genetic information" means any information about an identifiable individual that is derived from the presence, absence, alteration or mutation of an inherited gene or genes, or the presence or absence of a specific DNA marker or markers, and which has been obtained from a genetic test or analysis of the individual's DNA or from a genetic test or analysis of a person's DNA of whom the individual is a blood relative. "Private genetic information" does not include information that is derived from:

- (a) A routine physical examination;
- (b) A routine chemical, blood or urine analysis;
- (c) A test to identify the presence of drugs or HIV infection; or
- (d) A test performed due to the presence of signs, symptoms or other manifestations of a disease, illness, impairment or other disorder.

[39-8302, added 2006, ch. 293, sec. 1, p. 904.]

39-8303. RESTRICTIONS ON EMPLOYERS. (1) Except as provided in subsection (2) of this section, an employer shall not, in connection with a hiring, promotion, retention or other related decision:

- (a) Access or otherwise take into consideration private genetic information about an individual;
- (b) Request or require an individual to consent to a release for the purpose of accessing private genetic information about the individual;
- (c) Request or require an individual or his blood relative to submit to a genetic test; or
- (d) Inquire into the fact that an individual or his blood relative has taken or refused to take a genetic test.

(2) (a) Notwithstanding the provisions of subsection (1) of this section, an employer may seek an order compelling the disclosure of private genetic information held by an individual or third party pursuant to subsection (2) (b) of this section in connection with:

- (i) An employment-related judicial or administrative proceeding in which the individual has placed his health at issue; or
 - (ii) An employment-related decision in which the employer has a reasonable basis to believe that the individual's health condition poses a real and unjustifiable safety risk requiring the change or denial of an assignment.
- (b) (i) An order compelling the disclosure of private genetic information pursuant to this subsection (2) may only be entered upon a finding that:
- (A) Other ways of obtaining the private information are not available or would not be effective; and
 - (B) There is a compelling need for the private genetic information which substantially outweighs the potential harm to the privacy interests of the individual.
- (ii) An order compelling the disclosure of private genetic information pursuant to this subsection (2) shall:
- (A) Limit disclosure to those parts of the record containing information essential to fulfill the objective of the order;
 - (B) Limit disclosure to those persons whose need for the information is the basis of the order; and
 - (C) Include such other measures as may be necessary to limit disclosure for the protection of the individual.

[39-8303, added 2006, ch. 293, sec. 1, p. 905.]

39-8304. ENFORCEMENT. (1) Whenever the attorney general has reason to believe that any employer is engaging, has engaged, or is about to engage in any act in violation of this chapter, the attorney general may bring an action in the name of the state against that employer:

- (a) To obtain a declaratory judgment that the act violates the provisions of this chapter;
- (b) To enjoin any act that violates the provisions of this chapter by issuance of a temporary restraining order or preliminary or permanent injunction, without bond, upon the giving of appropriate notice;
- (c) To recover on behalf of the state and its agencies actual damages or restitution; or

(d) To recover civil penalties of up to twenty-five thousand dollars (\$25,000) per violation and reasonable expenses, investigative costs and attorney's fees.

(2) The penalties provided in this section are in addition to any other available remedy at law or equity.

(3) Any civil penalty imposed pursuant to this section shall be deposited in the state general fund.

[39-8304, added 2006, ch. 293, sec. 1, p. 905.]