



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB2399

Introduced 2/14/2008, by Sen. Terry Link

SYNOPSIS AS INTRODUCED:

410 ILCS 513/10
410 ILCS 513/15
410 ILCS 513/25
410 ILCS 513/40
410 ILCS 513/50 new

Amends the Genetic Information Privacy Act. Adds several definitions. Provides that the Act applies to the State and local governments. Provides that an employer, employment agency, labor organization, and licensing agency shall not directly or indirectly do any of the following: (1) solicit, request, require or purchase genetic information of a person or administer a genetic test to a person as a condition of employment, preemployment application, labor organization membership, or licensure; (2) affect the terms, conditions, or privileges of employment, preemployment application, labor organization membership, or licensure, or terminate the employment, labor organization membership, or licensure of any person because of genetic information with respect to the employee or family member (or information about a request for or the receipt of genetic testing by such employee or family member of such employee); (3) limit, segregate, or classify employees in any way that would deprive or tend to deprive any employee of employment opportunities or otherwise adversely affect the status of the employee as an employee because of genetic information with respect to the employee or family member (or information about a request for or the receipt of genetic testing by such employee or family member of such employee); (4) retaliate through discharge or in any other manner against any person alleging a violation of this Act. Makes other changes. Preempts home rule.

LRB095 19767 KBJ 46141 b

HOME RULE NOTE
ACT MAY APPLY

A BILL FOR

1 AN ACT concerning health.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Genetic Information Privacy Act is amended
5 by changing Sections 10, 15, 25, and 40 and by adding Section
6 50 as follows:

7 (410 ILCS 513/10)

8 Sec. 10. Definitions. As used in this Act:

9 "Employer" means the State of Illinois, any unit of local
10 government, and any board, commission, department,
11 institution, or school district, any party to a public
12 contract, any joint apprenticeship or training committee
13 within the State, and every other person employing employees
14 within the State.

15 "Employment agency" means both public and private
16 employment agencies and any person, labor organization, or
17 labor union having a hiring hall or hiring office regularly
18 undertaking, with or without compensation, to procure
19 opportunities to work, or to procure, recruit, refer, or place
20 employees.

21 "Family member" means, with respect to an individual, (i)
22 the spouse of the individual; (ii) a dependent child of the
23 individual, including a child who is born to or placed for

1 adoption with the individual; (iii) any other person qualifying
2 as a covered dependent under a managed care plan; and (iv) all
3 other individuals related by blood or law to the individual or
4 the spouse or child described in subsections (i) through (iii)
5 of this definition.

6 "Genetic information" means information about (i) an
7 individual's genetic tests; (ii) the genetic tests of a family
8 member of the individual; or (iii) the occurrence of a disease
9 or disorder in a family member of the individual. Genetic
10 information does not include information about the sex or age
11 of an individual.

12 "Genetic testing" and "genetic test" mean ~~means~~ a test or
13 analysis of a person's genes, gene products, DNA, RNA, or
14 chromosomes, proteins, or metabolites for genotypes,
15 mutations, chromosomal changes, abnormalities, or
16 deficiencies, including carrier status, that (i) are linked to
17 physical or mental disorders or impairments, (ii) indicate a
18 susceptibility to illness, disease, impairment, or other
19 disorders, whether physical or mental, or (iii) demonstrate
20 genetic or chromosomal damage due to environmental factors.
21 Genetic testing does not include routine physical
22 measurements; chemical, blood and urine analyses that are
23 widely accepted and in use in clinical practice; tests for use
24 of drugs; ~~and~~ tests for the presence of the human
25 immunodeficiency virus; and analyses of proteins or
26 metabolites that do not detect genotypes, mutations,

1 chromosomal changes, abnormalities, or deficiencies.

2 "Insurer" means (i) an entity that transacts an insurance
3 business and (ii) a managed care plan.

4 "Licensing agency" means a board, commission, committee,
5 council, department, or officers, except a judicial officer, in
6 this State or any political subdivision authorized to grant,
7 deny, renew, revoke, suspend, annul, withdraw, or amend a
8 license or certificate of registration.

9 "Labor organization" includes any organization, labor
10 union, craft union, or any voluntary unincorporated
11 association designed to further the cause of the rights of
12 union labor that is constituted for the purpose, in whole or in
13 part, of collective bargaining or of dealing with employers
14 concerning grievances, terms or conditions of employment, or
15 apprenticeships or applications for apprenticeships, or of
16 other mutual aid or protection in connection with employment,
17 including apprenticeships or applications for apprenticeships.

18 "Managed care plan" means a plan that establishes,
19 operates, or maintains a network of health care providers that
20 have entered into agreements with the plan to provide health
21 care services to enrollees where the plan has the ultimate and
22 direct contractual obligation to the enrollee to arrange for
23 the provision of or pay for services through:

24 (1) organizational arrangements for ongoing quality
25 assurance, utilization review programs, or dispute
26 resolution; or

1 (2) financial incentives for persons enrolled in the
2 plan to use the participating providers and procedures
3 covered by the plan.

4 A managed care plan may be established or operated by any
5 entity including a licensed insurance company, hospital or
6 medical service plan, health maintenance organization, limited
7 health service organization, preferred provider organization,
8 third party administrator, or an employer or employee
9 organization.

10 (Source: P.A. 90-25, eff. 1-1-98.)

11 (410 ILCS 513/15)

12 Sec. 15. Confidentiality of genetic information.

13 (a) Except as otherwise provided in this Act, genetic
14 testing and information derived from genetic testing is
15 confidential and privileged and may be released only to the
16 individual tested and to persons specifically authorized, in
17 writing in accordance with Section 30, by that individual to
18 receive the information. Except as otherwise provided in
19 subsection (b) and in Section 30, this information shall not be
20 admissible as evidence, nor discoverable in any action of any
21 kind in any court, or before any tribunal, board, agency, or
22 person pursuant to Part 21 of Article VIII of the Code of Civil
23 Procedure. No liability shall attach to any hospital,
24 physician, or other health care provider for compliance with
25 the provisions of this Act including a specific written release

1 by the individual in accordance with this Act.

2 (b) When a biological sample is legally obtained by a peace
3 officer for use in a criminal investigation or prosecution,
4 information derived from genetic testing of that sample may be
5 disclosed for identification purposes to appropriate law
6 enforcement authorities conducting the investigation or
7 prosecution and may be used in accordance with Section 5-4-3 of
8 the Unified Code of Corrections. The information may be used
9 for identification purposes during the course of the
10 investigation or prosecution with respect to the individual
11 tested without the consent of the individual and shall be
12 admissible as evidence in court.

13 The information shall be confidential and may be disclosed
14 only for purposes of criminal investigation or prosecution.

15 Genetic testing and genetic information derived thereof
16 shall be admissible as evidence and discoverable, subject to a
17 protective order, in any actions alleging breach of genetic
18 test or genetic information privacy under this Act or the
19 Illinois Insurance Code, alleging genetic information
20 discrimination under this Act and the Illinois Civil Rights Act
21 of 2003, or requesting a workers' compensation claim under the
22 Workers' Compensation Act.

23 (c) If the subject of the information requested by law
24 enforcement is found innocent of the offense or otherwise not
25 criminally penalized, then the court records shall be expunged
26 by the court within 30 days after the final legal proceeding.

1 The court shall notify the subject of the information of the
2 expungement of the records in writing.

3 (d) Results of genetic testing that indicate that the
4 individual tested is at the time of the test afflicted with a
5 disease, whether or not currently symptomatic, are not subject
6 to the confidentiality requirements of this Act.

7 (Source: P.A. 90-25, eff. 1-1-98.)

8 (410 ILCS 513/25)

9 Sec. 25. Use of genetic testing information by employers.

10 (a) An employer, employment agency, labor organization,
11 and licensing agency shall treat genetic testing information in
12 such a manner that is consistent with the requirements of
13 federal law, including but not limited to the Americans with
14 Disabilities Act, Title VII of the Civil Rights Act of 1964,
15 the Family and Medical Leave Act of 1993, the Occupational
16 Safety and Health Act of 1970, the Federal Mine Safety and
17 Health Act of 1977, or the Atomic Energy Act of 1954.

18 (b) An employer may release genetic testing information
19 only in accordance with Sections 15 and ~~Section~~ 30 of this Act.

20 (c) An employer, employment agency, labor organization,
21 and licensing agency shall not directly or indirectly do any of
22 the following:

23 (1) solicit, request, require or purchase genetic
24 information of a person or administer a genetic test to a
25 person as a condition of employment, preemployment

1 application, labor organization membership, or licensure;

2 (2) affect the terms, conditions, or privileges of
3 employment, preemployment application, labor organization
4 membership, or licensure, or terminate the employment,
5 labor organization membership, or licensure of any person
6 because of genetic information with respect to the employee
7 or family member (or information about a request for or the
8 receipt of genetic testing by such employee or family
9 member of such employee);

10 (3) limit, segregate, or classify employees in any way
11 that would deprive or tend to deprive any employee of
12 employment opportunities or otherwise adversely affect the
13 status of the employee as an employee because of genetic
14 information with respect to the employee or a family
15 member (or information about a request for or the receipt of
16 genetic testing by such employee or family member of such
17 employee); and

18 (4) retaliate through discharge or in any other manner
19 against any person alleging a violation of this Act.

20 (d) Except as provided in subsection (g) of this Section, a
21 person shall not knowingly sell to or interpret for an
22 employer, employment agency, labor organization, or licensing
23 agency, or its employees, agents, or members, a genetic test of
24 an employee, labor organization member, or licensee, or of a
25 prospective employee, member, or licensee.

26 (e) An agreement between a person and an employer,

1 prospective employer, employment agency, labor organization,
2 or licensing agency, or its employees, agents, or members
3 offering the person employment, labor organization membership,
4 licensure, or any pay or benefit in return for taking a genetic
5 test is prohibited.

6 (f) An employer shall not use genetic information or
7 genetic testing in furtherance of a workplace wellness program
8 benefiting employees. Nothing in this Act shall be construed to
9 prohibit an employer from requesting employee participation in
10 a bone fide workplace wellness program that does not use
11 genetic testing or genetic information.

12 (g) Nothing in this Act shall be construed to prohibit
13 genetic testing of an employee who requests a genetic test and
14 who provides written and informed consent, in accordance with
15 Section 30 of this Act, from taking a genetic test for the
16 following purposes: (1) Initiating a workers' compensation
17 claim under the Workers' Compensation Act. (2) Determining the
18 employee's susceptibility or level of exposure to potentially
19 toxic chemicals or potentially toxic substances in the
20 workplace, if the employer does not terminate the employee, or
21 take any other action that adversely affects any term,
22 condition, or privilege of the employee's employment as a
23 result of the genetic test.

24 (h) A purchase of commercially and publicly available
25 documents (including newspapers, magazines, periodicals, and
26 books, but not including medical databases or court records) or

1 inadvertently requesting family medical history by an
2 employer, employment agency, labor organization, and licensing
3 agency does not violate this Act.

4 (i) Despite lawful acquisition of genetic information
5 through subsections (g) and (h), an employer, employment
6 agency, labor organization, and licensing agency still may not
7 use or disclose the information in violation of this Act

8 (Source: P.A. 90-25, eff. 1-1-98.)

9 (410 ILCS 513/40)

10 Sec. 40. Right of action.

11 (a) Any person aggrieved by a violation of this Act shall
12 have a right of action in a State ~~the~~ circuit court or as a
13 supplemental claim in a federal district court against an
14 offending party. A prevailing party ~~and~~ may recover for each
15 violation:

16 (1) Against any party ~~person~~ who negligently violates a
17 provision of this Act, liquidated damages of \$2,500 ~~\$1,000~~
18 or actual damages, whichever is greater.

19 (2) Against any party ~~person~~ who intentionally or
20 recklessly violates a provision of this Act, liquidated
21 damages of \$15,000 ~~\$5,000~~ or actual damages, whichever is
22 greater.

23 (3) Reasonable attorney's ~~attorney~~ fees and costs,
24 including expert witness fees and other litigation
25 expenses.

1 (4) Such other relief, including an injunction, as the
2 State or federal court may deem appropriate.

3 (b) Article XL of the Illinois Insurance Code shall provide
4 the exclusive remedy for violations of Section 30 by insurers.

5 (c) For the purpose of this Act, the term "prevailing
6 party" includes any party:

7 (1) who obtains some of his or her requested relief
8 through a judicial judgment in his or her favor;

9 (2) who obtains some of his or her requested relief
10 through any settlement agreement approved by the court; or

11 (3) whose pursuit of a non-frivolous claim was a
12 catalyst for a unilateral change in position by the
13 opposing party relative to the relief sought.

14 (d) Notwithstanding any provisions of the law to the
15 contrary, any person aggrieved by a violation of subsection (b)
16 of Section 25 of this Act shall have a right of action in a
17 State circuit court or as a supplemental claim in a federal
18 district court to seek a preliminary injunction preventing the
19 release or disclosure of genetic testing or genetic information
20 pending the final resolution of any action under this Act.

21 (Source: P.A. 90-25, eff. 1-1-98.)

22 (410 ILCS 513/50 new)

23 Sec. 50. Home rule. The corporate authorities of a
24 municipality or other unit of local government may enact
25 ordinances, standards, rules, or regulations that protect

1 genetic information and genetic testing in a manner or to an
2 extent equal to or greater than the protection provided in this
3 Act. This Section is a limitation on the concurrent exercise of
4 home rule power under subsection (i) of Section 6 of Article
5 VII of the Illinois Constitution.