



Adopted in House Comm. on May 28, 2008

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LRB095 19767 RPM 51184 a

1 AMENDMENT TO SENATE BILL 2399

2 AMENDMENT NO. _____. Amend Senate Bill 2399 by replacing
3 everything after the enacting clause with the following:

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

1 labor union having a hiring hall or hiring office regularly
2 undertaking, with or without compensation, to procure
3 opportunities to work, or to procure, recruit, refer, or place
4 employees.

5 "Family member" means, with respect to an individual, (i)
6 the spouse of the individual; (ii) a dependent child of the
7 individual, including a child who is born to or placed for
8 adoption with the individual; (iii) any other person qualifying
9 as a covered dependent under a managed care plan; and (iv) all
10 other individuals related by blood or law to the individual or
11 the spouse or child described in subsections (i) through (iii)
12 of this definition.

13 "Genetic information" means, with respect to any
14 individual, information about (i) the individual's genetic
15 tests; (ii) the genetic tests of a family member of the
16 individual; and (iii) the manifestation or possible
17 manifestation of a disease or disorder in a family member of
18 the individual. Genetic information does not include
19 information about the sex or age of any individual.

20 "Genetic monitoring" means the periodic examination of
21 employees to evaluate acquired modifications to their genetic
22 material, such as chromosomal damage or evidence of increased
23 occurrence of mutations that may have developed in the course
24 of employment due to exposure to toxic substances in the
25 workplace in order to identify, evaluate, and respond to
26 effects of or control adverse environmental exposures in the

1 workplace.

2 "Genetic services" means a genetic test, genetic
3 counseling, including obtaining, interpreting, or assessing
4 genetic information, or genetic education.

5 "Genetic testing" and "genetic test" mean ~~means~~ a test or
6 analysis of human ~~a person's~~ genes, gene products, DNA, RNA, or
7 chromosomes, proteins, or metabolites that detect genotypes,
8 mutations, chromosomal changes, ~~for~~ abnormalities, or
9 deficiencies, including carrier status, that (i) are linked to
10 physical or mental disorders or impairments, (ii) indicate a
11 susceptibility to illness, disease, impairment, or other
12 disorders, whether physical or mental, or (iii) demonstrate
13 genetic or chromosomal damage due to environmental factors.
14 Genetic testing and genetic tests do ~~does~~ not include routine
15 physical measurements; chemical, blood and urine analyses that
16 are widely accepted and in use in clinical practice; tests for
17 use of drugs; ~~and~~ tests for the presence of the human
18 immunodeficiency virus; analyses of proteins or metabolites
19 that do not detect genotypes, mutations, chromosomal changes,
20 abnormalities, or deficiencies; or analyses of proteins or
21 metabolites that are directly related to a manifested disease,
22 disorder, or pathological condition that could reasonably be
23 detected by a health care professional with appropriate
24 training and expertise in the field of medicine involved.

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

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

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

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

21 (1) organizational arrangements for ongoing quality
22 assurance, utilization review programs, or dispute
23 resolution; or

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

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

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

8 (410 ILCS 513/15)

9 Sec. 15. Confidentiality of genetic information.

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

24 (b) When a biological sample is legally obtained by a peace
25 officer for use in a criminal investigation or prosecution,

1 information derived from genetic testing of that sample may be
2 disclosed for identification purposes to appropriate law
3 enforcement authorities conducting the investigation or
4 prosecution and may be used in accordance with Section 5-4-3 of
5 the Unified Code of Corrections. The information may be used
6 for identification purposes during the course of the
7 investigation or prosecution with respect to the individual
8 tested without the consent of the individual and shall be
9 admissible as evidence in court.

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

12 Genetic testing and genetic information derived thereof
13 shall be admissible as evidence and discoverable, subject to a
14 protective order, in any actions alleging a violation of this
15 Act, seeking to enforce Section 30 of this Act through the
16 Illinois Insurance Code, alleging discriminatory genetic
17 testing or use of genetic information under the Illinois Human
18 Rights Act or the Illinois Civil Rights Act of 2003, or
19 requesting a workers' compensation claim under the Workers'
20 Compensation Act.

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

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

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

6 (410 ILCS 513/25)

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

8 (a) An employer, employment agency, labor organization,
9 and licensing agency shall treat genetic testing and genetic
10 information in such a manner that is consistent with the
11 requirements of federal law, including but not limited to the
12 Genetic Information Nondiscrimination Act of 2008, the
13 Americans with Disabilities Act, Title VII of the Civil Rights
14 Act of 1964, the Family and Medical Leave Act of 1993, the
15 Occupational Safety and Health Act of 1970, the Federal Mine
16 Safety and Health Act of 1977, or the Atomic Energy Act of
17 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 testing or genetic information of a person or a family
25 member of the person, or administer a genetic test to a

1 person or a family member of the person as a condition of
2 employment, preemployment application, labor organization
3 membership, or licensure;

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

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

20 (4) retaliate through discharge or in any other manner
21 against any person alleging a violation of this Act or
22 participating in any manner in a proceeding under this Act.

23 (d) An agreement between a person and an employer,
24 prospective employer, employment agency, labor organization,
25 or licensing agency, or its employees, agents, or members
26 offering the person employment, labor organization membership,

1 licensure, or any pay or benefit in return for taking a genetic
2 test is prohibited.

3 (e) An employer shall not use genetic information or
4 genetic testing in furtherance of a workplace wellness program
5 benefiting employees unless (1) health or genetic services are
6 offered by the employer, (2) the employee provides written and
7 informed consent in accordance with Section 30 of this Act, (3)
8 only the employee or family member if the family member is
9 receiving genetic services and the licensed health care
10 professional or licensed genetic counselor involved in
11 providing such services receive individually identifiable
12 information concerning the results of such services, and (4)
13 any individually identifiable information is only available
14 for purposes of such services and shall not be disclosed to the
15 employer except in aggregate terms that do not disclose the
16 identity of specific employees.

17 (f) Nothing in this Act shall be construed to prohibit
18 genetic testing of an employee who requests a genetic test and
19 who provides written and informed consent, in accordance with
20 Section 30 of this Act, from taking a genetic test for the
21 purpose of initiating a workers' compensation claim under the
22 Workers' Compensation Act.

23 (g) A purchase of commercially and publicly available
24 documents, including newspapers, magazines, periodicals, and
25 books but not including medical databases or court records or
26 inadvertently requesting family medical history by an

1 employer, employment agency, labor organization, and licensing
2 agency does not violate this Act.

3 (h) Nothing in this Act shall be construed to prohibit an
4 employer that conducts DNA analysis for law enforcement
5 purposes as a forensic laboratory and that includes such
6 analysis in the Combined DNA Index System pursuant to the
7 federal Violent Crime Control and Law Enforcement Act of 1994
8 from requesting or requiring genetic testing or genetic
9 information of such employer's employees, but only to the
10 extent that such genetic testing or genetic information is used
11 for analysis of DNA identification markers for quality control
12 to detect sample contamination.

13 (i) Nothing in this Act shall be construed to prohibit an
14 employer from requesting or requiring genetic information to be
15 used for genetic monitoring of the biological effects of toxic
16 substances in the workplace, but only if (1) the employer
17 provides written notice of the genetic monitoring to the
18 employee; (2) the employee provides written and informed
19 consent under Section 30 of this Act or the genetic monitoring
20 is required by federal or State law; (3) the employee is
21 informed of individual monitoring results; (4) the monitoring
22 is in compliance with any federal genetic monitoring
23 regulations or State genetic monitoring regulations under the
24 authority of the federal Occupational Safety and Health Act of
25 1970; and (5) the employer, excluding any licensed health care
26 professional or licensed genetic counselor that is involved in

1 the genetic monitoring program, receives the results of the
2 monitoring only in aggregate terms that do not disclose the
3 identity of specific employees.

4 (j) Despite lawful acquisition of genetic testing or
5 genetic information under subsections (e) through (i) of this
6 Section, an employer, employment agency, labor organization,
7 and licensing agency still may not use or disclose the genetic
8 test or genetic information in violation of this Act.

9 (k) Except as provided in subsections (e), (f), (h), and
10 (i) of this Section, a person shall not knowingly sell to or
11 interpret for an employer, employment agency, labor
12 organization, or licensing agency, or its employees, agents, or
13 members, a genetic test of an employee, labor organization
14 member, or license holder, or of a prospective employee,
15 member, or license holder.

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

17 (410 ILCS 513/40)

18 Sec. 40. Right of action.

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

24 (1) Against any party ~~person~~ who negligently violates a
25 provision of this Act, liquidated damages of \$2,500 ~~\$1,000~~

1 or actual damages, whichever is greater.

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

6 (3) Reasonable attorney's ~~attorney~~ fees and costs,
7 including expert witness fees and other litigation
8 expenses.

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

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

13 (c) Notwithstanding any provisions of the law to the
14 contrary, any person alleging a violation of subsection (a) of
15 Section 15, subsection (b) of Section 25, Section 30, or
16 Section 35 of this Act shall have a right of action in a State
17 circuit court or as a supplemental claim in a federal district
18 court to seek a preliminary injunction preventing the release
19 or disclosure of genetic testing or genetic information pending
20 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. Any home rule unit of local
24 government, any non-home rule municipality, or any non-home
25 rule county within the unincorporated territory of the county

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