

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 or possible  
9 occurrence of a disease or disorder in a family member of the  
10 individual. Genetic information does not include information  
11 about the sex or age 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 member  
15 (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 bonafide workplace wellness program that does not use genetic  
11 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) Notwithstanding any provisions of the law to the  
6 contrary, any person aggrieved by a violation of subsection (b)  
7 of Section 25 of this Act shall have a right of action in a  
8 State circuit court or as a supplemental claim in a federal  
9 district court to seek a preliminary injunction preventing the  
10 release or disclosure of genetic testing or genetic information  
11 pending the final resolution of any action under this Act.

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

13           (410 ILCS 513/50 new)

14           Sec. 50. Home rule. Any home rule unit of local  
15 government, any non-home rule municipality, or any non-home  
16 rule county within the unincorporated territory of the county  
17 may enact ordinances, standards, rules, or regulations that  
18 protect genetic information and genetic testing in a manner or  
19 to an extent equal to or greater than the protection provided  
20 in this Act. This Section is a limitation on the concurrent  
21 exercise of home rule power under subsection (i) of Section 6  
22 of Article VII of the Illinois Constitution.