

Introduced by

Representatives Rohr, Becker, Brabandt, Heller, Kasper, Porter, Schmidt

Senators Berry, Sitte, Triplett

1 A BILL for an Act to create and enact a new chapter to title 23 of the North Dakota Century  
2 Code, relating to genetic privacy; and to provide a penalty.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** A new chapter to title 23 of the North Dakota Century Code is created and  
5 enacted as follows:

6 **Definitions.**

7 As used in this chapter:

- 8 1. "DNA" means deoxyribonucleic acid, including mitochondrial DNA, complementary  
9 DNA, and DNA derived from ribonucleic acid.
- 10 2. "DNA analysis" means DNA or genetic typing and testing to determine the presence or  
11 absence of genetic characteristics in an individual, including testing of nucleic acids,  
12 ribonucleic acids, proteins, metabolites, or chromosomes in order to diagnose or  
13 identify a genetic characteristic, genotype, mutation, or chromosomal change. The  
14 term does not include a routine physical measurement; a test for drugs, alcohol,  
15 cholesterol, or infectious agents; a chemical, blood, or urine analysis; or any other  
16 diagnostic test that is used in clinical or public health practice.
- 17 3. "Genetic characteristic" includes a gene, a chromosome, or an alteration of a gene or  
18 chromosome which may be tested to determine the existence or risk of a disease,  
19 disorder, trait, propensity, or syndrome or to identify an individual or a blood relative.  
20 The term does not include family history or a genetically transmitted characteristic the  
21 existence or identity of which is determined other than through a genetic test.

22 **Genetic testing.**

- 23 1. Except as provided under subsection 2:

- 1           a. A person may not collect a DNA sample from an individual, perform a DNA  
2           analysis on a sample, retain a DNA sample or the results of a DNA analysis, or  
3           disclose the results of a DNA analysis unless the person has first obtained the  
4           informed and written consent of the individual or of the individual's legal guardian  
5           or authorized representative, for the collection, analysis, retention, or disclosure.  
6           b. A DNA sample and the results of a DNA analysis performed on the sample are  
7           the exclusive property of the individual sampled or analyzed.  
8        2. Subsection 1 does not apply to DNA samples collected, analyses conducted, or  
9        samples or analyses results retained:  
10       a. Under chapter 31-13 or for other law enforcement purposes, including the  
11       identification of perpetrators, the investigation of crimes or juvenile proceedings,  
12       the identification of or search for missing individuals, the identification of  
13       unidentified or deceased individuals under section 12-68-04, the registration of  
14       criminal offenders under section 12.1-32-15, or comparable provisions of another  
15       jurisdiction;  
16       b. For paternity determination;  
17       c. For newborn screening as required by state or federal law;  
18       d. For emergency medical treatment; or  
19       e. For crime laboratory quality assurance procedures, validation procedures, and  
20       crime laboratory personnel training.  
21       3. A general authorization for the release of medical records or medical information may  
22       not be construed as the informed and written consent required under this section. The  
23       state department of health may adopt a uniform informed and written consent form to  
24       assist persons in meeting the requirements of this section. A person using that uniform  
25       informed and written consent form is exempt from civil or criminal liability for actions  
26       taken in good faith under the consent form. An individual may revoke or amend that  
27       individual's informed and written consent at any time.

28       **Private right of action.**

29       An individual may bring a civil action against a person that collects a DNA sample from the  
30       individual, performs a DNA analysis on a sample of that individual's DNA, retains a sample or  
31       the results of an analysis of that individual's DNA, or discloses the results of a DNA analysis of

1 that individual's DNA in violation of this chapter. In addition to actual damages suffered by the  
2 individual, a person violating this chapter is liable to the individual for damages in the amount of  
3 five thousand dollars or, if the violation resulted in profit or monetary gain to the violator, one  
4 hundred thousand dollars.

5 **Penalty.**

6 It is a class A misdemeanor for a person to knowingly collect a DNA sample from an  
7 individual, perform a DNA analysis on a sample, retain a DNA sample or the results of a DNA  
8 analysis, or disclose the results of a DNA analysis in violation of this chapter.