

HOUSE BILL NO. 1314

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 or
12 chromosomes in order to diagnose or identify a genetic characteristic. The term does
13 not include a routine physical measurement; a test for drugs, alcohol, cholesterol, or
14 the human immunodeficiency virus; a chemical, blood, or urine analysis; or any other
15 diagnostic test that is widely accepted and in use in clinical practice.
- 16 3. "Genetic characteristic" includes a gene, a chromosome, or an alteration of a gene or
17 chromosome which may be tested to determine the existence or risk of a disease,
18 disorder, trait, propensity, or syndrome or to identify an individual or a blood relative.
19 The term does not include family history or a genetically transmitted characteristic the
20 existence or identity of which is determined other than through a genetic test.

21 **Genetic testing.**

- 22 1. Except as provided under subsection 2:
- 23 a. A person may not collect a DNA sample from an individual, perform a DNA
24 analysis on a sample, retain a DNA sample or the results of a DNA analysis, or

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

24 **Private right of action.**

25 An individual may bring a civil action against a person that collects a DNA sample from the
26 individual, performs a DNA analysis on a sample of that individual's DNA, retains a sample or
27 the results of an analysis of that individual's DNA, or discloses the results of a DNA analysis of
28 that individual's DNA in violation of this chapter. In addition to actual damages suffered by the
29 individual, a person violating this chapter is liable to the individual for damages in the amount of
30 five thousand dollars or, if the violation resulted in profit or monetary gain to the violator, one
31 hundred thousand dollars.

1 **Penalty.**

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