

729.6 Genetic testing.

1. As used in this section, unless the context otherwise requires:

a. “Employer” means the state of Iowa, or any political subdivision, board, commission, department, institution, or school district, and every other person employing employees within the state.

b. “Employment agency” means a person, including the state, who regularly undertakes to procure employees or opportunities for employment for any other person.

c. “Genetic information” means the same as defined in 29 U.S.C. § 1191b(d)(6).

d. “Genetic services” means the same as defined in 29 U.S.C. § 1191b(d)(8).

e. “Genetic testing” means the same as genetic test as defined in 29 U.S.C. § 1191b(d)(7). “Genetic testing” does not mean routine physical measurement, a routine chemical, blood, or urine analysis, a biopsy, an autopsy, or clinical specimen obtained solely for the purpose of conducting an immediate clinical or diagnostic test to detect an existing disease, illness, impairment, or disorder, or a test for drugs or for human immunodeficiency virus infections.

f. “Health insurance” means a contract, policy, or plan providing for health insurance coverage as defined in section 513B.2.

g. “Health insurer” means a carrier, as defined in section 513B.2.

h. “Labor organization” means any organization which exists for the purpose in whole or in part of collective bargaining, or dealing with employers concerning grievances, terms, or conditions of employment, or of other mutual aid or protection in connection with employment.

i. “Licensing agency” means a board, commission, committee, council, department, or officer, except a judicial officer, in the state, or in a city, county, township, or local government, authorized to grant, deny, renew, revoke, suspend, annul, withdraw, or amend a license or certificate of registration.

j. “Third-party administrator” means the same as defined in section 510.11.

k. “Unfair genetic testing” means any test or testing procedure that violates this section.

2. An employer, employment agency, labor organization, licensing agency, or its employees, agents, or members shall not directly or indirectly do any of the following:

a. Solicit, require, or administer a genetic test to a person as a condition of employment, preemployment application, labor organization membership, or licensure.

b. 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 who obtains a genetic test.

3. a. A person shall not obtain genetic information or samples for genetic testing from an individual without first obtaining informed and written consent from the individual or the individual’s authorized representative.

b. A person shall not perform genetic testing of an individual or collect, retain, transmit, or use genetic information without the informed and written consent of the individual or the individual’s authorized representative.

c. The following exceptions apply to the prohibitions in paragraphs “a” and “b”:

(1) To the extent that genetic information or the results of genetic testing may be collected, retained, transmitted, or used without the individual’s written and informed consent pursuant to federal or other state law.

(2) To identify an individual in the course of a criminal investigation by a law enforcement agency.

(3) To identify deceased individuals.

(4) To establish parental identity.

(5) To screen newborns.

(6) For the purposes of medical or scientific research and education and for the use of medical repositories and registries so long as the information does not contain personally identifiable information of an individual.

4. a. (1) With respect to health insurance, a third-party administrator or health insurer shall not release genetic information pertaining to an individual without prior written authorization of the individual. Written authorization shall be required for each disclosure and shall include the person to whom the disclosure is being made.

(2) The following exceptions apply to the requirement in subparagraph (1):

(a) Individuals participating in research settings, including individuals governed by the federal policy for the protection of human research subjects.

(b) Tests conducted purely for research, tests for somatic as opposed to heritable mutations, and testing for forensic purposes.

(c) Newborn screening.

(d) Paternity testing.

(e) Criminal investigations.

b. (1) With respect to health insurance, a health insurer shall not discriminate against an individual or a member of the individual's family on the basis of genetic information or genetic testing.

(2) This section shall not require a health insurer to provide particular benefits other than those provided under the terms of the health insurer's plan or coverage. With respect to health insurance, a health insurer shall not consider a genetic propensity, susceptibility, or carrier status as a preexisting condition for the purpose of limiting or excluding benefits, establishing rates, or providing coverage.

(3) With respect to health insurance, a health insurer shall not use genetic information or genetic testing for underwriting health insurance in the individual and group markets.

c. The commissioner of insurance shall adopt rules as necessary for the administration of this subsection.

d. A violation of this subsection is an unfair insurance trade practice under section 507B.4.

5. Except as provided in subsection 9, a person shall not sell to or interpret for an employer, employment agency, labor organization, or licensing agency, or its employees, agents, or members, a genetic test of an employee, labor organization member, or licensee, or of a prospective employee, member, or licensee.

6. An agreement between a person and an employer, prospective employer, employment agency, labor organization, or licensing agency, or its employees, agents, or members offering the person employment, labor organization membership, licensure, or any pay or benefit in return for taking a genetic test is prohibited.

7. An employee, labor organization member, or licensee, or prospective employee, member, or licensee who acted in good faith shall not be discharged, disciplined, or discriminated against in any manner for filing a complaint or testifying in any proceeding or action involving violations of this section. An employee, labor organization member, or licensee, or prospective employee, member, or licensee discharged, disciplined, or otherwise discriminated against in violation of this section shall be compensated by the employer, employment agency, labor organization, or licensing agency in the amount of any loss of wages and benefits arising out of the discrimination.

8. Subsections 2, 3, 5, 6, and 7 of this section may be enforced through a civil action.

a. A person who violates subsection 2, 3, 5, 6, or 7 of this section or who aids in the violation of subsection 2, 3, 5, 6, or 7 of this section is liable to an aggrieved employee, labor organization member, or licensee, or aggrieved prospective employee, member, or licensee, for affirmative relief including reinstatement or hiring, with or without back pay, membership, licensing, or any other equitable relief as the court deems appropriate including attorney fees and court costs.

b. If a person commits, is committing, or proposes to commit, an act in violation of subsection 2, 3, 5, 6, or 7 of this section, an injunction may be granted through an action in district court to prohibit the person from continuing such acts. The action for injunctive relief may be brought by an aggrieved employee, labor organization member, or licensee, or aggrieved prospective employee, member, or licensee, the county attorney, or the attorney general.

c. A person who in good faith brings an action under this subsection alleging that an employer, employment agency, labor organization, or licensing agency has violated subsection 2, 3, 5, 6, or 7 of this section shall establish that sufficient evidence exists upon which a reasonable person could find that a violation has occurred. Upon proof that sufficient evidence exists upon which a finding could be made that a violation has occurred

as required under this paragraph, the employer, employment agency, labor organization, or licensing agency has the burden of proving that the requirements of this section were met.

9. This section does not prohibit the genetic testing of an employee who requests a genetic test and who provides written and informed consent to taking a genetic test for any of the following purposes:

a. Investigating a workers' compensation claim under chapters 85, 85A, 85B, and 86.

b. Determining the employee's susceptibility or level of exposure to potentially toxic chemicals or potentially toxic substances in the workplace, if the employer does not terminate the employee, or take any other action that adversely affects any term, condition, or privilege of the employee's employment as a result of the genetic test.

92 Acts, ch 1059, §1; 2007 Acts, ch 10, §183; 2010 Acts, ch 1153, §2 – 6; 2010 Acts, ch 1193, §132, 133

Referred to in §507B.4