

SENATE BILL NO. 225

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY SENATOR ELLIS

Introduced: 1/26/00

Referred: Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to privacy, to private genetic information, to the rights of**
2 **employees related to electronic monitoring by employers, and to certain consumer**
3 **information; and amending Rule 26, Alaska Rules of Civil Procedure."**

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new
6 section to read:

7 FINDINGS. The legislature finds that

8 (1) an individual's genetic information is uniquely private and personal
9 information that should not be collected or disclosed without that individual's authorization;

10 (2) an analysis of an individual's DNA (deoxyribonucleic acid) provides
11 information not only about an individual, but also about that individual's parents, siblings, and
12 children, thus implicating family privacy; and

13 (3) uniform rules for the collection, storage, and use of identifiable DNA
14 samples and private genetic information obtained from them are needed both to protect

1 individual privacy and to permit legitimate genetic research.

2 * **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section
3 to read:

4 **PURPOSE.** It is the purpose of the legislature in secs. 1 - 3, 7, and 8 of this Act to

5 (1) define the circumstances under which DNA samples may be collected,
6 stored, and analyzed;

7 (2) define the circumstances under which private genetic information may be
8 created, stored, and disclosed;

9 (3) define the rights of individuals whose DNA samples are collected, stored,
10 and analyzed;

11 (4) define the rights of individuals whose private genetic information is stored
12 and disclosed;

13 (5) define the responsibilities of persons who collect, analyze, and use DNA
14 samples and the genetic information derived from them; and

15 (6) establish effective mechanisms to enforce the rights and responsibilities
16 defined in this Act.

17 * **Sec. 3.** AS 18 is amended by adding a new chapter to read:

18 **Chapter 14. Genetic Privacy.**

19 **Sec. 18.14.010. Collection of DNA samples.** (a) A person may not collect
20 or cause to be collected an individually identifiable DNA sample for genetic analysis
21 without the written authorization of the sample source or the sample source's
22 representative.

23 (b) Before collecting a DNA sample from a sample source for genetic analysis,
24 the person collecting the sample or causing the sample to be collected shall orally
25 inform the sample source or the sample source's representative

26 (1) that consent to the collection or taking of the DNA sample is
27 voluntary;

28 (2) that consent to the genetic analysis is voluntary;

29 (3) of the information that can reasonably be expected to be derived
30 from the genetic analysis;

31 (4) of the use, if any, that the sample source or the sample source's

1 representative will be able to make of the information derived from the genetic
2 analysis;

3 (5) of the right of the sample source or the sample source's
4 representative to inspect records that contain information derived from the genetic
5 analysis;

6 (6) of the right of the sample source or the sample source's
7 representative to have the DNA sample destroyed;

8 (7) of the right of the sample source or the sample source's
9 representative to revoke consent to the genetic analysis at any time before the
10 completion of the analysis;

11 (8) that the genetic analysis may result in information about the sample
12 source's genetic relatives that may not be known to those relatives but could be
13 important, and, if so, that the sample source will have to decide whether to share that
14 information with relatives;

15 (9) that, in the future, a person may ask if the sample source has
16 obtained genetic testing or analysis and condition a benefit on the disclosure of
17 information regarding the testing or analysis;

18 (10) that the collection and analysis of the DNA sample and the private
19 genetic information derived from the analysis are protected by this chapter; and

20 (11) of the availability of genetic counseling.

21 **Sec. 18.14.020. Analysis of DNA samples.** (a) Genetic analysis of an
22 individually identifiable DNA sample is prohibited unless specifically authorized in
23 writing by the sample source or the sample source's representative.

24 (b) A person may not analyze an individually identifiable DNA sample without
25 ascertaining that written authorization for the analysis has been obtained.

26 **Sec. 18.14.030. Ownership and destruction of DNA samples.** (a) An
27 individually identifiable DNA sample is the property of the sample source.

28 (b) The sample source or the sample source's representative has the right to
29 order the destruction of the DNA sample.

30 (c) An individually identifiable DNA sample must be destroyed upon
31 completion of genetic analysis by the person collecting or storing the sample unless

1 (1) the sample source or the sample source's representative has directed
2 otherwise in writing; or

3 (2) all individual identifiers linking the sample to the sample source are
4 destroyed.

5 **Sec. 18.14.040. Notice of rights and assurances.** A person who collects or
6 stores DNA samples for genetic analysis shall, before the collection, storage, or
7 analysis of a DNA sample, provide a sample source or a sample source's
8 representative and any other person upon request with a notice of rights and assurances
9 that contains the following information and assurances:

10 (1) a DNA sample will only be used as authorized in the written
11 authorization;

12 (2) an individually identifiable DNA sample is the property of the
13 sample source;

14 (3) unless specifically prohibited by the sample source or sample
15 source's representative, researchers may be granted access to a DNA sample that
16 cannot be linked to an individual identifier;

17 (4) the sample source or the sample source's representative has the
18 right to order the destruction of the individually identifiable DNA sample at any time;

19 (5) the individually identifiable DNA sample will be destroyed on the
20 completion of the analysis unless the sample source or the sample source's
21 representative has previously directed otherwise in writing;

22 (6) the sample source can designate another individual as the person
23 authorized to make decisions regarding the individually identifiable DNA sample after
24 the death of the sample source, and, if a person is so designated, the sample source
25 shall notify the facility in which the DNA sample is stored;

26 (7) the sample source or the sample source's representative has the
27 right to examine the records containing private genetic information, to obtain copies
28 of the records, and to request correction or amendment of them;

29 (8) private genetic information may be disclosed to private researchers
30 who qualify for access under this chapter;

31 (9) the collection and analysis of the DNA sample and the private

1 genetic information derived from the analysis are protected by this chapter, and a
 2 person whose rights under this chapter have been violated may seek civil remedies,
 3 including damages; and

4 (10) genetic counseling is available.

5 **Sec. 18.14.050. Disclosure of private genetic information.** (a) Except as
 6 provided in AS 18.14.090, a person who, in the ordinary course of business, practice
 7 of a profession, or rendering of a service, creates, stores, receives, or furnishes private
 8 genetic information may not, by any means of communication, disclose private genetic
 9 information except in accordance with a written authorization as provided in
 10 AS 18.14.060.

11 (b) Redisclosure of private genetic information that has been disclosed to any
 12 person under a valid written authorization is prohibited.

13 (c) Private genetic information maintained by a public agency is confidential
 14 and is not a public record under AS 09.25.110 - 09.25.140.

15 (d) A person who knowingly violates this section is guilty of a class B
 16 misdemeanor. In this subsection, "knowingly" has the meaning given in
 17 AS 11.81.900(a).

18 (e) A person may bring a civil action for a violation of this section, and the
 19 court may grant appropriate relief, including punitive damages.

20 **Sec. 18.14.060. Authorization for disclosure of private genetic information.**

21 (a) To be valid, an authorization for disclosure of private genetic information must

22 (1) be in writing, signed by the sample source or the sample source's
 23 representative and dated on the date of the signature;

24 (2) identify the individual granting authorization and the individual's
 25 relationship to the sample source;

26 (3) identify the person permitted to make the disclosure;

27 (4) describe the specific genetic information to be disclosed;

28 (5) identify the person to whom the information is to be disclosed;

29 (6) describe the purpose for which the disclosure is being made;

30 (7) state the date upon which the authorization will expire, which, in
 31 no event, shall be later than 30 days after the date of the authorization; and

1 (8) include a statement that the authorization is subject to revocation
2 at any time before the disclosure is actually made.

3 (b) A copy of the authorization for disclosure of private genetic information
4 shall be provided by the person obtaining the authorization to the sample source or the
5 sample source's representative.

6 (c) A sample source or the sample source's representative may revoke or
7 amend the authorization, in whole or in part, at any time.

8 (d) A sample source may not maintain an action against a person for disclosure
9 of private genetic information made in good faith reliance on a valid authorization if
10 the person did not have notice of the revocation of the authorization at the time the
11 disclosure was made.

12 (e) Each disclosure made with the written authorization described in (a) of this
13 section must be accompanied by the following written statement: "This information
14 has been disclosed to you from confidential records protected under AS 18.14, and any
15 further disclosure of the information without specific authorization is prohibited."

16 (f) A general authorization for the release of medical records or medical
17 information may not be construed as an authorization for disclosure of private genetic
18 information.

19 **Sec. 18.14.070. Inspection and copying of records containing private**
20 **genetic information.** (a) A person who maintains private genetic information shall,
21 upon written request, permit the sample source or the sample source's representative
22 to inspect records containing private genetic information and shall provide a copy of
23 the records upon request by the sample source or the sample source's representative.

24 (b) Upon receipt of a written request from a sample source or the sample
25 source's representative to inspect or copy all or part of records containing private
26 genetic information, a person, as promptly as required under the circumstances but not
27 later than 30 business days after receiving the request, shall either make the
28 information available to the sample source or the sample source's representative for
29 inspection during regular business hours or provide a copy, if requested, to the
30 individual.

31 (c) A person shall provide an explanation of terms and any code or

1 abbreviations used in records containing the private genetic information upon request
2 of the sample source or the sample source's representative.

3 (d) A person may charge a reasonable fee, not to exceed the person's actual
4 duplication cost, for copies of records that are provided.

5 **Sec. 18.14.080. Amendment of records.** (a) Within 45 days of receipt of
6 a written request by the sample source or the sample source's representative to correct
7 or amend, in whole or in part, a record containing private genetic information, a person
8 who maintains records containing private genetic information shall, if the information
9 is not accurate or complete for the purposes for which the person may use or disclose
10 it,

11 (1) make the correction or amendment requested;

12 (2) inform the individual that the correction or amendment has been
13 made;

14 (3) make reasonable efforts to inform any person to whom the
15 uncorrected or unamended portion of the information was previously disclosed of the
16 correction or amendment that has been made; and

17 (4) at the request of the individual, make reasonable efforts to inform
18 any known source of the uncorrected or unamended portion of the information about
19 the correction or amendment that has been made.

20 (b) If a correction or amendment of a record is refused, the person maintaining
21 the records shall inform the sample source or the sample source's representative of

22 (1) the reasons for the refusal of the person to make the correction or
23 amendment;

24 (2) the procedure, if any, for further review of the refusal; and

25 (3) the right of the sample source or sample source's representative to
26 file with the person a concise statement setting out the requested correction or
27 amendment and the individual's reasons for disagreeing with the refusal of the person
28 to make the correction or amendment.

29 (c) After a sample source or the sample source's representative has filed a
30 statement of disagreement under (b)(3) of this section, in any subsequent disclosure of
31 the disputed portion of the information, the person maintaining the records

- 1 (1) shall include a copy of the individual's statement; and
 2 (2) may include a statement of the reasons for not making the requested
 3 correction or amendment.

4 **Sec. 18.14.090. Compulsory disclosure of private genetic information.** (a)

5 A person who maintains private genetic information may not be compelled to disclose
 6 the private genetic information under a request for disclosure in any judicial,
 7 legislative, or administrative proceeding unless

8 (1) the person maintaining the private genetic information has the
 9 authorization of the sample source or the sample source's representative to release the
 10 information in response to the request for disclosure;

11 (2) the sample source or the sample source's representative is a party
 12 to the proceeding, and the private genetic information is at issue; or

13 (3) the private genetic information is for use in a law enforcement
 14 proceeding or investigation in which the person maintaining the information is the
 15 subject or party.

16 (b) If compulsory disclosure of private genetic information is sought under
 17 (a)(2) of this section or in a proceeding or investigation under (a)(3) of this section,
 18 the person requesting disclosure shall serve upon the person maintaining the private
 19 genetic information and upon the sample source, the sample source's representative,
 20 the sample source's attorney, or the sample source's representative's attorney the
 21 original or a copy of the disclosure request at least 30 days before the date on which
 22 compulsory disclosure is requested and a statement of the right of the sample source
 23 or the sample source's representative and of the person maintaining the private genetic
 24 information to have any objections to the disclosure heard by the court, legislature,
 25 or governmental agency before the issuance of an order compelling disclosure and the
 26 procedure to be followed to have any objections heard. Service shall be made by
 27 certified mail, return receipt requested, or personally in the manner required by the
 28 Alaska Rules of Civil Procedure for service of a summons and complaint. The person
 29 maintaining the private genetic information may not disclose the information unless
 30 30 days have elapsed since the date of the request and an objection to the disclosure
 31 has not been made. If an objection to the disclosure has been made, the person

1 maintaining the private genetic information may not disclose the information until after
2 a hearing and a determination that good cause exists under (d) of this section, and after
3 issuance of an order under (e) of this section.

4 (c) Service of compulsory process or discovery requests upon a person
5 maintaining private genetic information must be accompanied by a written certification,
6 signed by the person seeking to obtain the private genetic information or that person's
7 authorized representative, identifying at least one paragraph of (a) of this section under
8 which compulsory process or discovery is sought. The certification must also state,
9 in the case of information sought under (a)(2) or (3) of this section, that the
10 requirements under (b) of this section for notice have been met. A copy of the written
11 certification shall be maintained as a permanent part of the record of private genetic
12 information.

13 (d) An order compelling the disclosure of private genetic information may be
14 entered by the court or by a legislative or governmental agency only after a hearing
15 and determination that good cause exists. To make this determination, the court or the
16 legislative or governmental agency must find that

17 (1) other ways of obtaining the private genetic information are not
18 available or would not be effective; and

19 (2) there is a compelling need for the private genetic information that
20 outweighs the potential harm to the privacy interest of the subject of the information.

21 (e) An order under this section compelling disclosure of private genetic
22 information must

23 (1) limit disclosure to those parts of the record containing the
24 information essential to fulfill the objective of the order;

25 (2) limit disclosure to those persons whose need for the information is
26 the basis of the order;

27 (3) require the deletion of individual identifiers from a document made
28 available to the public;

29 (4) include other measures, if any, that are necessary to limit disclosure
30 for the protection of the subject of the information, such as sealing from public
31 scrutiny the record or portion of the record of a proceeding for which disclosure of the

1 information has been ordered.

2 **Sec. 18.14.200. Applicability.** This chapter does not apply to samples
3 collected for inclusion in the deoxyribonucleic acid identification registration system
4 under AS 44.41.035.

5 **Sec. 18.14.400. Definitions.** In this chapter,

6 (1) "compulsory disclosure" means disclosure of private genetic
7 information required by federal or state law in connection with a judicial, legislative,
8 or administrative proceeding, including disclosure required by subpoena, subpoena
9 duces tecum, request or notice to produce, court order, or another method of requiring
10 a person maintaining private genetic information to produce private genetic information
11 under federal or state law;

12 (2) "disclose," when used with respect to private genetic information,
13 means to provide access to the information or to verify the information, but only if the
14 access or verification is provided to a person other than the sample source or the
15 sample source's representative;

16 (3) "DNA" means deoxyribonucleic acid;

17 (4) "DNA sample" means a human biological specimen from which
18 DNA can be extracted or DNA extracted from a specimen;

19 (5) "individual identifier" means a name, address, social security
20 number, health insurance identification number, or similar information by which the
21 identity of a sample source can be determined with reasonable accuracy, either directly
22 or by reference to other available information; the term does not include characters,
23 numbers, or codes assigned to an individual or a DNA sample that cannot be used to
24 determine the identity of a sample source;

25 (6) "individually identifiable DNA sample" means a DNA sample
26 linked to an individual identifier;

27 (7) "private genetic information" means information about an
28 identifiable individual that is derived from the presence, absence, alteration, or
29 mutation of a gene or genes or the presence or absence of a specific DNA marker or
30 markers and that has been obtained from an analysis of the individual's DNA or from
31 an analysis of the DNA of a person to whom the individual is related;

1 (8) "sample source" means the individual from whose body the DNA
2 sample originated;

3 (9) "sample source's representative" means a person who has the legal
4 authority to make health care decisions concerning a minor or an incompetent person,
5 or the personal representative, if any, of a deceased person's estate, or, if the deceased
6 person's estate does not have a personal representative, the next of kin of the deceased
7 person.

8 * **Sec. 4.** AS 23.10 is amended by adding new sections to read:

9 **Article 10. Restrictions on Electronic Monitoring of Employees.**

10 **Sec. 23.10.700. Restrictions on electronic monitoring of employees and**
11 **others.** (a) An employer may not use methods of electronic monitoring to collect
12 information concerning employees unless

13 (1) the information is collected only at the employer's premises and
14 concerns activities that occurred at least in part on or immediately adjacent to the
15 employer's premises;

16 (2) information relating to an employee is collected only during the
17 employee's working hours; however, an employer is not liable under AS 23.10.700 -
18 23.10.720 for conducting electronic monitoring the sole purpose and principal effect
19 of which is to collect information permitted by AS 23.10.700 - 23.10.720 if the
20 monitoring collects incidental information in violation of this paragraph.

21 (b) Except as provided in (c) of this section, before an employer engages in
22 electronic monitoring of an employee, the employer shall provide written notice of the
23 monitoring to each employee who may be affected. The notice must inform the
24 employee of the

25 (1) type of information that is to be collected;

26 (2) means by which the information is to be collected;

27 (3) times at which the monitoring is to occur;

28 (4) location of the monitoring equipment;

29 (5) use to be made of the information collected by electronic
30 monitoring;

31 (6) identity of the employees who will be monitored.

1 (c) An employer may engage in electronic monitoring of an employee without
2 giving prior notice to the employee if the employer is acting in cooperation with law
3 enforcement officers who are proceeding under a search warrant.

4 (d) If an employer engages in electronic monitoring that will have the direct
5 or indirect effect of monitoring a person other than an employee, the employer shall
6 provide notice to those whose conduct may be monitored. The notice may take any
7 form that is reasonably calculated to inform the person monitored.

8 (e) An employer that engages in electronic monitoring of an employee's
9 communications shall inform the affected employee of the monitoring before the
10 monitoring occurs. However, an employer who is engaged in a bona fide quality
11 control program is not required to provide prior notice of the monitoring. A quality
12 control program is a bona fide program if

13 (1) the information collected relates to the performance of a specific
14 defined task;

15 (2) the employer has a written standard for the performance of that
16 task;

17 (3) the purpose of the monitoring program is to compare the
18 performance of employees performing the task to the performance standard;

19 (4) information regarding the performance of all employees performing
20 the task is collected on a reasonably equal basis; and

21 (5) the affected employees are evaluated on their performance at a time
22 when they can reasonably be expected to remember the events on which the evaluation
23 is based.

24 (f) An employer may not conduct electronic monitoring in an employee
25 bathroom, locker room, shower or bath facility, or other similar area.

26 (g) An employer may disclose information collected through electronic
27 monitoring of an employee only

28 (1) with the prior written consent of the employee as provided in (1) of
29 this section;

30 (2) to an officer, employee, or authorized agent of the employer who
31 has a legitimate need for the information in performance of employment duties; or

1 (3) to an appropriate law enforcement agency.

2 (h) An employer may not discharge, discipline, or discriminate against an
3 employee in compensation or in a term, condition, or privilege of employment because
4 the employee has asserted rights under AS 23.10.700 - 23.10.720, assisted another
5 employee in asserting rights under these statutes, reported a violation of these statutes,
6 or participated in an enforcement action under these statutes.

7 (i) The attorney general may investigate an alleged violation of AS 23.10.700 -
8 23.10.720. An employer who is found in violation of these statutes is punishable by
9 a fine of not more than \$1,000.

10 (j) A person who alleges a violation of this section may bring a civil action,
11 and the court may grant appropriate relief, including punitive damages.

12 (k) If it appears that an employer is engaged in an act or practice that violates
13 or will violate a provision of this section, an employee or the attorney general may
14 bring an action in a competent court to enjoin the act or practice and to enforce
15 compliance with this section.

16 (l) An agreement by an individual to waive, release, or commute the
17 individual's right to benefits or any other rights under this section is void unless the
18 agreement is in writing and describes with specificity the information to be released.

19 **Sec. 23.10.720. Definitions for AS 23.10.700 - 23.10.720.** In AS 23.10.700 -
20 23.10.720,

21 (1) "electronic monitoring" or "monitoring" means the collection of
22 information concerning employee activities or communications by a means other than
23 direct observation, including the use of a computer or eavesdropping on a telephone,
24 wire, radio, camera, or other electromagnetic, photoelectronic, or photo-optical system;

25 (2) "employee" means a person who performs services for an employer
26 for compensation and includes a former employee;

27 (3) "employer" means a person who employs one or more other persons
28 and includes the state, the University of Alaska, the Alaska Railroad, and political
29 subdivisions of the state.

30 * **Sec. 5.** AS 45.50.471(b) is amended by adding a new paragraph to read:

31 (43) violating AS 45.50.478.

1 * **Sec. 6.** AS 45.50 is amended by adding a new section to read:

2 **Sec. 45.50.478. Restriction on releasing certain consumer information.** (a)

3 A retailer who has issued a discount device in this state may not sell, lease, or
4 otherwise release to any person consumer information unless the retailer

5 (1) has provided the consumer with the option in writing of authorizing
6 or preventing the retailer from selling, leasing, or otherwise releasing the consumer
7 information; and

8 (2) the consumer has authorized the release of the consumer
9 information.

10 (b) Notwithstanding (a) of this section, a retailer may release consumer
11 information for the purpose of

12 (1) delivering to the consumer the retailer's billing statements or
13 promotional offers; or

14 (2) making a credit report if the discount device is a credit card.

15 (c) Subsection (a) of this section does not apply to the release of consumer
16 information by a retailer to another person that, directly or through one or more
17 intermediaries, controls, is controlled by, or is under common control with the retailer.
18 However, if consumer information is released by a retailer to another person under this
19 subsection, (a) of this section applies to the release of that consumer information by
20 the other person.

21 (d) A violation of this section constitutes an unfair or deceptive act or practice
22 under AS 45.50.471.

23 (e) In this section,

24 (1) "consumer" means an individual who is an actual or prospective
25 purchaser of goods used primarily for personal, family, or household purposes;

26 (2) "consumer information" means information that identifies a
27 consumer and that is obtained by a retailer in connection with the issuance of a
28 discount device to the consumer or the use of the discount device by the consumer;

29 (3) "discount device" means a card, scanner device, or other device
30 issued by a retailer to a consumer that the consumer may use to obtain a discount
31 when making purchases from the retailer;

1 (4) "retailer" means a person who sells goods used primarily for
2 personal, family, or household purposes to a consumer who is not in the business of
3 reselling the goods.

4 * **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section
5 to read:

6 **INDIRECT COURT RULE AMENDMENT.** The provisions of AS 18.14.090, added
7 by sec. 3 of this Act, have the effect of changing Rule 26, Alaska Rules of Civil Procedure,
8 by adding additional procedures that must be followed before private genetic information may
9 be disclosed in response to a discovery request.

10 * **Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section
11 to read:

12 **APPLICABILITY.** The provisions of secs. 1 - 3 and 7 of this Act apply only to DNA
13 samples collected on or after the effective date of this Act.