

# Genetic Information Privacy Act



## Impact:

- GIPA fines and penalties add up to excessive sums, creating an environment prone to nuclear verdicts.
- GIPA includes a private right of action that allows employees of a company to sue on their own behalf or as a group in a class action making GIPA litigation vulnerable to third party litigation funding.
- GIPA's fee shifting provision for prevailing parties is attractive for plaintiffs' attorneys who file class action lawsuits that potentially result in large verdicts.

## Quick Facts:

- GIPA is an Illinois statute that regulates the disclosure of genetic information.
- GIPA's statutory damages are \$2,500 per negligent violation, up to \$15,000 for an intentional or reckless violation and include a fee-shifting provision for prevailing parties.
- GIPA has a five year statute of limitations for actions.
- To avoid GIPA litigation, Illinois companies may want to examine how genetic information is collected, secured and used in order to ensure compliance with the law.

## What is the Genetic Information Privacy Act?

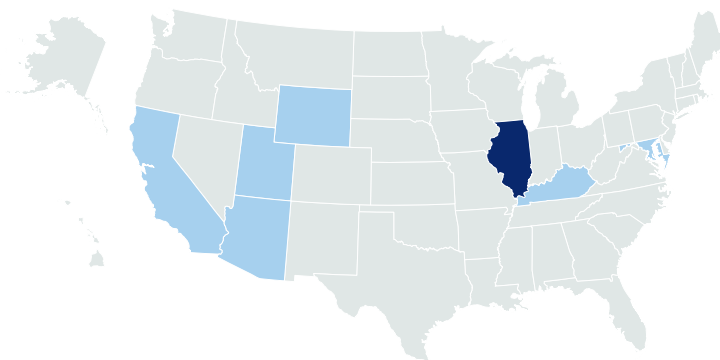
The Illinois Genetic Information Privacy Act (GIPA) (40 ILCS 513, *et seq.*) creates a private right of action to protect individuals from having their genetic information disclosed and/or used against them. GIPA litigation was dormant for years. The recent uptick in lawsuits, particularly class actions, target employers, insurers and companies experiencing a data breach. GIPA provides for statutory damages of \$2,500 per negligent violation and up to \$15,000 for an intentional or reckless violation. GIPA also includes a fee-shifting provision for prevailing plaintiffs, entitling plaintiffs also to recover legal fees in these cases. GIPA's definition of protected "genetic information" includes: (i) individual's genetic tests; (ii) genetic tests of family members of an individual; and (iii) manifestation or possible manifestation of a disease/disorder in family members of an individual.

GIPA prevents employers from soliciting or requesting genetic information as a condition of employment or pre-employment, altering terms of employment based on genetic information, depriving employees of opportunities due to genetic information and retaliating against any person alleging a GIPA violation. Insurers are prohibited from using or disclosing genetic information for underwriting purposes, relaying genetic information to third parties and seeking information from genetic testing for use in connection with a policy.

## State of the States

GIPA: IL

Other states with genetic information privacy acts: AZ, CA, KY, MD, UT, WY



## Solutions

- Revise GIPA to clarify and remedy the *per violation* framework, as recently amended in the Illinois Biometric Information Protection Act.
- Additional remedies could include requiring proof of an actual injury prior to damages being awarded or shortening the five-year statute of limitations for GIPA actions.
- Many of the GIPA lawsuits filed will be cases of first impression as to the scope of the Act, its application, and what constitutes “genetic information”.
- Companies operating in Illinois may consider:
  - Determine if information collected could be considered “genetic information?”
  - Determine if written disclosures or consent procedures exist that address “genetic information?”
  - How do you determine if “genetic information” is handled and secured? This includes “employee wellness programs.”

### Zurich North America Initiatives

- Leads the development and collaboration of industry partners on all lawsuit abuse reform efforts.
- Advocates for all lawsuit abuse reform issues impacting Zurich and its customers through its Government & Regulatory Relations (GRR) team.
- Created the first Claims Judicial & Legislative Affairs (CJLA) unit within Zurich North America Claims as a social inflation task force comprised of a dedicated team of professionals to provide education and advocacy support.
- Launched and participates in the annual Lawsuit Abuse Reform Symposium with industry coalition members.
- Hosts Zurich Defense Attorney Summit twice a year through CJLA.
- Publishes the *Quarterly Digest* and *Regional Recap* to keep industry partners informed through CJLA.

### What can you do?

- Support local civil justice organizations.
- Gather examples and data to show abusive practices by plaintiffs’ attorneys to use as examples to lobby for reform.
- Lobby to allow “right to cure” and affirmative defenses for certified compliance.

To learn how you can get involved, contact Zurich North America’s Claims Judicial & Legislative Affairs team at [usz\\_cjla@zurichna.com](mailto:usz_cjla@zurichna.com).



### Zurich North America

1299 Zurich Way, Schaumburg, Illinois 60196-1056  
800-382-2150

This document is provided for informational purposes only. Please consult with qualified legal counsel to address your particular circumstances and needs. Zurich is not providing legal advice and assumes no liability concerning the information set forth above.

©2024 The Zurich Services Corporation. All Rights Reserved.

A1-P0831308-B (09/24) P0862058

