

HOUSE BILL 793

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2000 Regular Session  
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By: **Delegates Finifter, McIntosh, Benson, Bobo, Bronrott, Clagett, Dobson,  
Dypski, Mandel, Morhaim, Paige, Riley, Rosenberg, and Zirkin**

Introduced and read first time: February 11, 2000

Assigned to: Economic Matters

Reassigned to: Commerce and Government Matters, February 18, 2000

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 21, 2000

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Genetic Information - Nondiscrimination in ~~the Workplace~~ Employment**

3 FOR the purpose of making it an unlawful employment practice for an employer to  
4 fail or refuse to hire or to discharge an individual or otherwise discriminate  
5 against an individual because of the individual's genetic information or the  
6 individual's refusal to submit to a genetic test or make available the results of a  
7 genetic test; making stylistic changes; defining certain terms; and generally  
8 relating to nondiscrimination in employment and genetic information.

9 BY repealing and reenacting, with amendments,  
10 Article 49B - Human Relations Commission  
11 Section 15 and 16  
12 Annotated Code of Maryland  
13 (1998 Replacement Volume and 1999 Supplement)

14 BY repealing and reenacting, without amendments,  
15 Article - Insurance  
16 Section 27-909  
17 Annotated Code of Maryland  
18 (1997 Volume and 1999 Supplement)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
20 MARYLAND, That the Laws of Maryland read as follows:

1 **Article 49B - Human Relations Commission**

2 15.

3 For the purposes of this subtitle:

4 (a) The term "person" includes one or more individuals, labor unions,  
5 partnerships, associations, corporations, legal representatives, mutual companies,  
6 joint-stock companies, trusts, unincorporated organizations, trustees, trustees in  
7 bankruptcy, or receivers.

8 (b) The term "employer" means a person engaged in an industry or business  
9 who has fifteen or more employees for each working day in each of twenty or more  
10 calendar weeks in the current or preceding calendar year, and any agent of such a  
11 person; such term does include the State of Maryland to the extent as may be  
12 provided in this article but such term does not include a bona fide private  
13 membership club (other than a labor organization) which is exempt from taxation  
14 under § 501(c) of the Internal Revenue Code.

15 (c) The term "employment agency" means any person regularly undertaking  
16 with or without compensation to procure employees for an employer or to procure for  
17 employees opportunities to work for an employer and includes an agent or such a  
18 person; but shall not include an agency of the United States or an agency of the State  
19 of Maryland or political subdivision thereof, except such term shall include the United  
20 States Employment Service and the system of State and local employment services  
21 receiving federal assistance.

22 (d) The term "labor organization" means a labor organization engaged in an  
23 industry and any agent of such an organization, and includes any organization of any  
24 kind, any agency, or employee representation committee, group, association, or plan  
25 so engaged in which employees participate and which exists for the purpose, in whole  
26 or in part, of dealing with employers concerning grievances, labor disputes, wages,  
27 rates of pay, hours, or other terms or conditions of employment, and any conference,  
28 general committee, joint or system board, or joint council so engaged which is  
29 subordinate to a national or international labor organization.

30 (e) The term "employee" means an individual employed by an employer,  
31 except that "employee" does not include any person elected to public office or any  
32 person chosen by the officer to be on the officer's personnel staff, or an appointee in  
33 the policymaking level or an immediate advisor with respect to the exercise of the  
34 constitutional or legal powers of the office. The exception set forth in the preceding  
35 sentence does not include employees subject to the State or local civil service laws.

36 (f) The term "religion" includes all aspects of religious observances and  
37 practice, as well as belief, except in those cases when the observance, practice, or  
38 belief cannot be reasonably accommodated by an employer without causing undue  
39 hardship on the conduct of the employer's business.

40 (g) The term "disability" means any physical disability, infirmity,  
41 malformation or disfigurement which is caused by bodily injury, birth defect or illness

1 including epilepsy, and which shall include, but not be limited to, any degree of  
2 paralysis, amputation, lack of physical coordination, blindness or visual impairment,  
3 deafness or hearing impairment, muteness or speech impediment or physical reliance  
4 on a seeing eye dog, wheelchair, or other remedial appliance or device; and any  
5 mental impairment or deficiency as, but not limited to, retardation or such other  
6 which may have necessitated remedial or special education and related services.

7 (H) "GENETIC INFORMATION" HAS THE MEANING STATED IN § 27-909(A)(3) OF  
8 THE INSURANCE ARTICLE.

9 (I) "GENETIC TEST" HAS THE MEANING STATED IN § 27-909(A)(5) OF THE  
10 INSURANCE ARTICLE.

11 16.

12 (a) It shall be an unlawful employment practice for an employer:

13 (1) To fail or refuse to hire or to discharge any individual, or otherwise to  
14 discriminate against any individual with respect to [his] THE INDIVIDUAL'S  
15 compensation, terms, conditions, or privileges of employment, because of such  
16 individual's race, color, religion, sex, age, national origin, marital status, GENETIC  
17 INFORMATION, or disability OR BECAUSE OF THE INDIVIDUAL'S REFUSAL TO SUBMIT  
18 TO A GENETIC TEST OR MAKE AVAILABLE THE RESULTS OF A GENETIC TEST  
19 unrelated in nature and extent so as to reasonably preclude the performance of the  
20 employment; [or]

21 (2) To limit, segregate, or classify [his] ITS employees or applicants for  
22 employment in any way which would deprive or tend to deprive any individual of  
23 employment opportunities or otherwise adversely affect [his] THE INDIVIDUAL'S  
24 status as an employee, because of the individual's race, color, religion, sex, age,  
25 national origin, marital status, GENETIC INFORMATION, or disability OR BECAUSE OF  
26 THE INDIVIDUAL'S REFUSAL TO SUBMIT TO A GENETIC TEST OR MAKE AVAILABLE  
27 THE RESULTS OF A GENETIC TEST unrelated in nature and extent so as to reasonably  
28 preclude the performance of the employment; OR

29 (3) TO REQUEST OR REQUIRE GENETIC TESTS OR GENETIC  
30 INFORMATION AS A CONDITION FOR HIRING OR DETERMINING BENEFITS.

31 (b) It shall be an unlawful employment practice for an employment agency to  
32 fail or refuse to refer for employment, or otherwise to discriminate against, any  
33 individual because of [his] THE INDIVIDUAL'S race, color, religion, sex, age, national  
34 origin, marital status, or disability unrelated in nature and extent so as to reasonably  
35 preclude the performance of the employment, or to classify or refer for employment  
36 any individual on the basis of [his] THE INDIVIDUAL'S race, color, religion, sex, age,  
37 national origin, marital status, or disability unrelated in nature and extent so as to  
38 reasonably preclude the performance of the employment.

39 (c) It shall be an unlawful employment practice for a labor organization: (1) to  
40 exclude or to expel from its membership, or otherwise to discriminate against, any  
41 individual because of [his] THE INDIVIDUAL'S race, color, religion, sex, age, national

1 origin, marital status, or disability unrelated in nature and extent so as to reasonably  
2 preclude the performance of the employment; (2) to limit, segregate or classify its  
3 membership, or to classify or fail or refuse to refer for employment any individual, in  
4 any way which would deprive or tend to deprive any individual of employment  
5 opportunities, or would limit such employment opportunities or otherwise adversely  
6 affect [his] THE INDIVIDUAL'S status as an employee or as an applicant for  
7 employment, because of such individual's race, color, religion, sex, age, national  
8 origin, marital status, or disability unrelated in nature and extent so as to reasonably  
9 preclude the performance of the employment; or (3) to cause or attempt to cause an  
10 employer to discriminate against an individual in violation of this section.

11 (d) It shall be an unlawful employment practice for any employer, labor  
12 organization, or joint labor-management committee controlling apprenticeship or  
13 other training or retraining, including on-the-job training programs to discriminate  
14 against any individual because of [his] THE INDIVIDUAL'S race, color, religion, sex,  
15 age, national origin, marital status, or disability unrelated in nature or extent so as to  
16 reasonably preclude the performance of the employment in admission to, or  
17 employment in, any program established to provide apprenticeship or other training.

18 (e) It is an unlawful employment practice for an employer, labor organization,  
19 or employment agency to print or cause to be printed or published any notice or  
20 advertisement relating to employment by the employer or membership in or any  
21 classification or referral for employment by the labor organization, or relating to any  
22 classification or referral for employment by the agency, indicating any preference,  
23 limitation, specification, or discrimination, based on race, color, religion, sex, age,  
24 national origin or on the basis of a disability. However, a notice or advertisement may  
25 indicate a preference, limitation, specification, or discrimination based on religion,  
26 sex, age, national origin or disability when religion, sex, age, national origin or  
27 disability is a bona fide occupational qualification for employment.

28 (f) It is an unlawful employment practice for an employer to discriminate  
29 against any of [his] ITS employees or applicants for employment, for an employment  
30 agency to discriminate against any individual, or for a labor organization to  
31 discriminate against any member thereof or applicant for membership, because [he]  
32 THE INDIVIDUAL has opposed any practice made an unlawful employment practice by  
33 this subtitle or because [he] THE INDIVIDUAL has made a charge, testified, assisted,  
34 or participated in any manner in an investigation, proceeding, or hearing under this  
35 subtitle.

36 (g) Notwithstanding any other provision of this subtitle, (1) it is not an  
37 unlawful employment practice for an employer to hire and employ employees, for an  
38 employment agency to classify, or refer for employment any individual, for a labor  
39 organization to classify its membership or to classify or refer for employment any  
40 individual, or for an employer, labor organization or joint labor-management  
41 committee controlling apprenticeship or other training or retraining programs to  
42 admit or employ any individual in any such program, on the basis of [his] THE  
43 INDIVIDUAL'S religion, national origin or disability in those instances where sex, age,  
44 religion, national origin or disability is a bona fide occupational qualification  
45 reasonably necessary to the normal operation of that particular business or

1 enterprise; (2) it is not an unlawful employment practice for an employer to establish  
2 standards concerning an employee's dress and grooming if the standards are directly  
3 related to the nature of the employment of the employee; (3) it is not an unlawful  
4 employment practice for a school, college, university, or other educational institution  
5 or institution of learning to hire and employ employees of a particular religion if the  
6 school, college, university, or other educational institution or institution of learning is,  
7 in whole or in substantial part, owned, supported, controlled, or managed by a  
8 particular religion or by a particular religious corporation, association, or society or if  
9 the curriculum of the school, college, university, or other educational institution or  
10 institution of learning is directed toward the propagation of a particular religion; and  
11 (4) it is not unlawful for an employer, employment agency or labor organization to  
12 observe the terms of a bona fide seniority system or any bona fide employee benefit  
13 plan such as a retirement, pension or insurance plan, which is not a subterfuge to  
14 evade the purposes of this subtitle; however, no employee benefit plan shall excuse  
15 the failure to hire any individual.

16 (h) Nothing contained in this subtitle shall be interpreted to require any  
17 employer, employment agency, labor organization, or joint labor-management  
18 committee subject to this subtitle to grant preferential treatment to any individual or  
19 to any group because of the race, color, religion, sex, age, national origin or disability  
20 of the individual or group on account of an imbalance which may exist with respect to  
21 the total number or percentage of persons of any race, color, religion, sex, age,  
22 national origin or persons with disabilities employed by any employer, referred or  
23 classified for employment by any employment agency or labor organization, admitted  
24 to membership or classified by any labor agency or labor organization, admitted to  
25 membership or classified by any labor organization, or admitted to, or employed in,  
26 any apprenticeship or other training program, in comparison with the total number or  
27 percentage of persons of such race, color, religion, sex, age, national origin or persons  
28 with disabilities in any community, State, section, or other area, or in the available  
29 work force in any community, State, section, or other area.

30

#### Article - Insurance

31 27-909.

32 (a) (1) In this section the following words have the meanings indicated.

33 (2) "Gene product" means the biochemical material, either RNA or  
34 protein, made by a gene.

35 (3) (i) "Genetic information" means information:

36 1. about chromosomes, genes, gene products, or inherited  
37 characteristics that may derive from an individual or a family member;

38 2. obtained for diagnostic and therapeutic purposes; and

39 3. obtained at a time when the individual to whom the  
40 information relates is asymptomatic for the disease.

- 1 (ii) "Genetic information" does not include:
- 2 1. routine physical measurements;
  - 3 2. chemical, blood, and urine analyses that are widely  
4 accepted and in use in clinical practice;
  - 5 3. tests for use of drugs; or
  - 6 4. tests for the presence of the human immunodeficiency  
7 virus.

8 (4) "Genetic services" means health services that are provided to obtain,  
9 assess, and interpret genetic information for diagnostic and therapeutic purposes and  
10 for genetic education and counseling.

11 (5) "Genetic test" means a laboratory test of human chromosomes, genes,  
12 or gene products that is used to identify the presence or absence of inherited or  
13 congenital alterations in genetic material that are associated with disease or illness.

14 (b) This section does not apply to life insurance policies, annuity contracts,  
15 long-term care insurance policies, or disability insurance policies.

16 (c) An insurer, nonprofit health service plan, or health maintenance  
17 organization may not:

18 (1) use a genetic test, the results of a genetic test, genetic information, or  
19 a request for genetic services to reject, deny, limit, cancel, refuse to renew, increase  
20 the rates of, affect the terms or conditions of, or otherwise affect a health insurance  
21 policy or contract;

22 (2) request or require a genetic test, the results of a genetic test, or  
23 genetic information for the purpose of determining whether or not to issue or renew  
24 health benefits coverage; or

25 (3) release identifiable genetic information or the results of a genetic test  
26 to any person who is not an employee of the insurer, nonprofit health service plan, or  
27 health maintenance organization or a participating health care provider who provides  
28 medical services to insureds or enrollees without the prior written authorization of  
29 the individual from whom the test results or genetic information was obtained.

30 (d) Disclosure of identifiable genetic information to an employee or health care  
31 provider authorized under subsection (c)(3) of this section shall only be for the  
32 purpose of:

33 (1) providing medical care to patients; or

34 (2) conducting research that has been approved by an institutional  
35 review board established in accordance with federal law.

1 (e) The authorization described in subsection (c)(3) of this section is required  
2 for each disclosure and shall describe the individual or entities making the disclosure,  
3 to whom the disclosure is to be made, and the information to be disclosed.

4 (f) (1) For purposes of this subsection, §§ 4-113, 4-114, 27-501, and 27-505  
5 of this article apply to nonprofit health service plans and health maintenance  
6 organizations.

7 (2) The Commissioner may issue an order under §§ 4-113, 4-114,  
8 27-501, and 27-505 of this article if the Commissioner finds a violation of this  
9 section.

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take  
11 effect October 1, 2000.