

# SENATE BILL 54

E1, D3

(PRE-FILED)

9lr1030

CF 9lr0432

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By: **Senator Forehand**

Requested: November 17, 2008

Introduced and read first time: January 14, 2009

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Genetic Privacy – Individual’s Genetic Information – Personal Property**  
3 **Rights**

4 FOR the purpose of prohibiting a person from knowingly collecting, analyzing, or  
5 retaining a DNA sample from an individual, performing a DNA analysis, or  
6 retaining or disclosing the results of a DNA analysis, or disclosing the results of  
7 a DNA analysis without certain written informed consent; exempting the  
8 collection and analysis of DNA samples for certain purposes from the  
9 prohibition; providing that the DNA sample and the results of the DNA analysis  
10 are the exclusive property of the individual from whom the sample is collected;  
11 authorizing the Department of Health and Mental Hygiene to adopt regulations  
12 to establish a uniform written informed consent form; providing that a certain  
13 person is exempt from certain liability; allowing an individual to revoke or  
14 amend a certain informed consent; establishing penalties for a violation of this  
15 Act; authorizing an individual to bring a civil action against a certain person  
16 under certain circumstances; providing that a person is liable for certain  
17 damages and reasonable attorney fees under certain circumstances; defining  
18 certain terms; and generally relating to genetic privacy.

19 BY adding to

20 Article – Criminal Law

21 Section 3–1001 through 3–1005 to be under the new subtitle “Subtitle 10.  
22 Genetic Privacy”

23 Annotated Code of Maryland

24 (2002 Volume and 2008 Supplement)

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

27 **Article – Criminal Law**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



**SUBTITLE 10. GENETIC PRIVACY.****3-1001.**

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) "DNA" MEANS DEOXYRIBONUCLEIC ACID.

(C) (1) "DNA ANALYSIS" MEANS DNA OR GENETIC TYPING AND TESTING TO DETERMINE THE PRESENCE OR ABSENCE OF GENETIC INFORMATION IN AN INDIVIDUAL, INCLUDING TESTS OF NUCLEIC ACIDS OR CHROMOSOMES IN ORDER TO DIAGNOSE OR IDENTIFY GENETIC INFORMATION.

(2) "DNA ANALYSIS" DOES NOT INCLUDE:

(I) A ROUTINE PHYSICAL MEASUREMENT;

(II) A TEST FOR DRUGS, ALCOHOL, CHOLESTEROL, OR THE HUMAN IMMUNODEFICIENCY VIRUS; OR

(III) A CHEMICAL, BLOOD, OR URINE ANALYSIS, UNLESS THE ANALYSIS CAN BE USED TO EXTRACT GENETIC INFORMATION.

(D) (1) "GENETIC INFORMATION" MEANS INFORMATION DERIVED FROM A GENETIC TEST:

(I) ABOUT CHROMOSOMES, GENES, GENE PRODUCTS, OR INHERITED CHARACTERISTICS THAT MAY DERIVE FROM AN INDIVIDUAL OR A FAMILY MEMBER;

(II) NOT OBTAINED FOR DIAGNOSTIC AND THERAPEUTIC PURPOSES; AND

(III) OBTAINED AT A TIME WHEN THE INDIVIDUAL TO WHOM THE INFORMATION RELATES IS ASYMPTOMATIC FOR THE DISEASE, DISORDER, ILLNESS, OR IMPAIRMENT TO WHICH THE INFORMATION RELATES.

(2) "GENETIC INFORMATION" DOES NOT INCLUDE INFORMATION:

(I) RELATING TO A DISEASE, DISORDER, ILLNESS, OR IMPAIRMENT THAT IS OR HAS BEEN MANIFESTED OR FOR WHICH THE INDIVIDUAL IS OR HAS BEEN SYMPTOMATIC; OR

1                   **(II) DERIVED FROM:**

2                   **1. ROUTINE PHYSICAL MEASUREMENTS;**

3                   **2. CHEMICAL, BLOOD, AND URINE ANALYSES;**

4                   **3. TESTS FOR THE USE OF DRUGS;**

5                   **4. TESTS FOR THE PRESENCE OF THE HUMAN**  
6 **IMMUNODEFICIENCY VIRUS; OR**

7                   **5. TESTS FOR THE PURPOSE OF DIAGNOSING A**  
8 **MANIFESTED DISEASE, DISORDER, ILLNESS, OR IMPAIRMENT.**

9 **3-1002.**

10           **THIS SUBTITLE DOES NOT APPLY TO DNA SAMPLES COLLECTED AND**  
11 **ANALYZED:**

12                   **(1) UNDER TITLE 2, SUBTITLE 5 OF THE PUBLIC SAFETY**  
13 **ARTICLE OR A COMPARABLE PROVISION OF ANOTHER JURISDICTION;**

14                   **(2) FOR A LAW ENFORCEMENT PURPOSE, INCLUDING THE**  
15 **IDENTIFICATION OF A PERPETRATOR, THE INVESTIGATION OF A CRIME, OR THE**  
16 **IDENTIFICATION OF A MISSING OR UNIDENTIFIED PERSON OR OF HUMAN**  
17 **REMAINS;**

18                   **(3) FOR DETERMINING PATERNITY;**

19                   **(4) TO SCREEN NEWBORNS AS REQUIRED BY STATE OR FEDERAL**  
20 **LAW AND PERFORM FOLLOW-UP TESTING; OR**

21                   **(5) FOR THE PURPOSE OF EMERGENCY MEDICAL TREATMENT.**

22 **3-1003.**

23                   **(A) A PERSON MAY NOT KNOWINGLY COLLECT A DNA SAMPLE FROM AN**  
24 **INDIVIDUAL, PERFORM A DNA ANALYSIS ON A SAMPLE, RETAIN A DNA SAMPLE**  
25 **OR THE RESULTS OF A DNA ANALYSIS, OR DISCLOSE THE RESULTS OF A DNA**  
26 **ANALYSIS UNLESS THE PERSON HAS FIRST OBTAINED THE WRITTEN INFORMED**  
27 **CONSENT OF THE INDIVIDUAL, OR THE INDIVIDUAL'S LEGAL GUARDIAN OR**  
28 **AUTHORIZED REPRESENTATIVE, FOR THE COLLECTION, ANALYSIS, RETENTION,**  
29 **OR DISCLOSURE.**

1           **(B) A DNA SAMPLE AND THE RESULTS OF A DNA ANALYSIS**  
2 **PERFORMED ON THE SAMPLE ARE THE EXCLUSIVE PROPERTY OF THE**  
3 **INDIVIDUAL FROM WHOM THE SAMPLE IS COLLECTED.**

4           **(C) A GENERAL AUTHORIZATION FOR THE RELEASE OF MEDICAL**  
5 **RECORDS OR MEDICAL INFORMATION MAY NOT BE CONSTRUED AS THE**  
6 **WRITTEN INFORMED CONSENT REQUIRED BY THIS SECTION.**

7           **(D) (1) THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE MAY**  
8 **ADOPT REGULATIONS TO ESTABLISH A UNIFORM WRITTEN INFORMED CONSENT**  
9 **FORM TO ASSIST PERSONS IN MEETING THE REQUIREMENTS OF THIS SECTION.**

10           **(2) A PERSON USING A UNIFORM WRITTEN INFORMED CONSENT**  
11 **FORM ESTABLISHED BY THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE**  
12 **IS EXEMPT FROM CIVIL OR CRIMINAL LIABILITY FOR ACTIONS TAKEN UNDER**  
13 **THE CONSENT FORM.**

14           **(E) AN INDIVIDUAL MAY REVOKE OR AMEND THE INDIVIDUAL'S**  
15 **WRITTEN INFORMED CONSENT AT ANY TIME.**

16 **3-1004.**

17           **A PERSON WHO VIOLATES THIS SUBTITLE IS GUILTY OF A MISDEMEANOR**  
18 **AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR**  
19 **OR A FINE NOT EXCEEDING \$10,000 OR BOTH.**

20 **3-1005.**

21           **(A) AN INDIVIDUAL MAY BRING A CIVIL ACTION AGAINST A PERSON**  
22 **WHO COLLECTS A DNA SAMPLE FROM THE INDIVIDUAL, PERFORMS A DNA**  
23 **ANALYSIS ON A SAMPLE, RETAINS A DNA SAMPLE OR THE RESULTS OF A DNA**  
24 **ANALYSIS, OR DISCLOSES THE RESULTS OF A DNA ANALYSIS IN VIOLATION OF**  
25 **THIS SUBTITLE.**

26           **(B) IN ADDITION TO THE ACTUAL DAMAGES SUFFERED BY THE**  
27 **INDIVIDUAL, A PERSON FOUND IN A CIVIL ACTION TO HAVE VIOLATED THIS**  
28 **SUBTITLE SHALL BE LIABLE TO THE INDIVIDUAL FOR:**

29           **(1) DAMAGES IN THE AMOUNT OF \$5,000 OR, IF THE VIOLATION**  
30 **RESULTED IN PROFIT OR MONETARY GAIN TO THE VIOLATOR, THE GREATER OF**  
31 **THE TOTAL PROFIT GAINED FROM THE USE OF THE INDIVIDUAL'S GENETIC**  
32 **INFORMATION OR \$100,000; AND**

1                   **(2) REASONABLE ATTORNEY FEES.**

2                   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
3                   October 1, 2009.