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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

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A BILL ENTITLED

1 AN ACT concerning

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

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.

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

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

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

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

21 15.

22 For the purposes of this subtitle:

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

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

8 (c) The term "employment agency" means any person regularly undertaking  
9 with or without compensation to procure employees for an employer or to procure for  
10 employees opportunities to work for an employer and includes an agent or such a  
11 person; but shall not include an agency of the United States or an agency of the State  
12 of Maryland or political subdivision thereof, except such term shall include the United  
13 States Employment Service and the system of State and local employment services  
14 receiving federal assistance.

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

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

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

33 (g) The term "disability" means any physical disability, infirmity,  
34 malformation or disfigurement which is caused by bodily injury, birth defect or illness  
35 including epilepsy, and which shall include, but not be limited to, any degree of  
36 paralysis, amputation, lack of physical coordination, blindness or visual impairment,  
37 deafness or hearing impairment, muteness or speech impediment or physical reliance  
38 on a seeing eye dog, wheelchair, or other remedial appliance or device; and any  
39 mental impairment or deficiency as, but not limited to, retardation or such other  
40 which may have necessitated remedial or special education and related services.

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

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

3 16.

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

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

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

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

23 (b) It shall be an unlawful employment practice for an employment agency to  
24 fail or refuse to refer for employment, or otherwise to discriminate against, any  
25 individual because of [his] THE INDIVIDUAL'S race, color, religion, sex, age, national  
26 origin, marital status, or disability unrelated in nature and extent so as to reasonably  
27 preclude the performance of the employment, or to classify or refer for employment  
28 any individual on the basis of [his] THE INDIVIDUAL'S race, color, religion, sex, age,  
29 national origin, marital status, or disability unrelated in nature and extent so as to  
30 reasonably preclude the performance of the employment.

31 (c) It shall be an unlawful employment practice for a labor organization: (1) to  
32 exclude or to expel from its membership, 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; (2) to limit, segregate or classify its  
36 membership, or to classify or fail or refuse to refer for employment any individual, in  
37 any way which would deprive or tend to deprive any individual of employment  
38 opportunities, or would limit such employment opportunities or otherwise adversely  
39 affect [his] THE INDIVIDUAL'S status as an employee or as an applicant for  
40 employment, because of such individual's race, color, religion, sex, age, national  
41 origin, marital status, or disability unrelated in nature and extent so as to reasonably

1 preclude the performance of the employment; or (3) to cause or attempt to cause an  
2 employer to discriminate against an individual in violation of this section.

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

10 (e) It is an unlawful employment practice for an employer, labor organization,  
11 or employment agency to print or cause to be printed or published any notice or  
12 advertisement relating to employment by the employer or membership in or any  
13 classification or referral for employment by the labor organization, or relating to any  
14 classification or referral for employment by the agency, indicating any preference,  
15 limitation, specification, or discrimination, based on race, color, religion, sex, age,  
16 national origin or on the basis of a disability. However, a notice or advertisement may  
17 indicate a preference, limitation, specification, or discrimination based on religion,  
18 sex, age, national origin or disability when religion, sex, age, national origin or  
19 disability is a bona fide occupational qualification for employment.

20 (f) It is an unlawful employment practice for an employer to discriminate  
21 against any of [his] ITS employees or applicants for employment, for an employment  
22 agency to discriminate against any individual, or for a labor organization to  
23 discriminate against any member thereof or applicant for membership, because [he]  
24 THE INDIVIDUAL has opposed any practice made an unlawful employment practice by  
25 this subtitle or because [he] THE INDIVIDUAL has made a charge, testified, assisted,  
26 or participated in any manner in an investigation, proceeding, or hearing under this  
27 subtitle.

28 (g) Notwithstanding any other provision of this subtitle, (1) it is not an  
29 unlawful employment practice for an employer to hire and employ employees, for an  
30 employment agency to classify, or refer for employment any individual, for a labor  
31 organization to classify its membership or to classify or refer for employment any  
32 individual, or for an employer, labor organization or joint labor-management  
33 committee controlling apprenticeship or other training or retraining programs to  
34 admit or employ any individual in any such program, on the basis of [his] THE  
35 INDIVIDUAL'S religion, national origin or disability in those instances where sex, age,  
36 religion, national origin or disability is a bona fide occupational qualification  
37 reasonably necessary to the normal operation of that particular business or  
38 enterprise; (2) it is not an unlawful employment practice for an employer to establish  
39 standards concerning an employee's dress and grooming if the standards are directly  
40 related to the nature of the employment of the employee; (3) it is not an unlawful  
41 employment practice for a school, college, university, or other educational institution  
42 or institution of learning to hire and employ employees of a particular religion if the  
43 school, college, university, or other educational institution or institution of learning is,  
44 in whole or in substantial part, owned, supported, controlled, or managed by a  
45 particular religion or by a particular religious corporation, association, or society or if

1 the curriculum of the school, college, university, or other educational institution or  
2 institution of learning is directed toward the propagation of a particular religion; and  
3 (4) it is not unlawful for an employer, employment agency or labor organization to  
4 observe the terms of a bona fide seniority system or any bona fide employee benefit  
5 plan such as a retirement, pension or insurance plan, which is not a subterfuge to  
6 evade the purposes of this subtitle; however, no employee benefit plan shall excuse  
7 the failure to hire any individual.

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

22

#### Article - Insurance

23 27-909.

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

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

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

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

30 2. obtained for diagnostic and therapeutic purposes; and

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

33 (ii) "Genetic information" does not include:

34 1. routine physical measurements;

35 2. chemical, blood, and urine analyses that are widely  
36 accepted and in use in clinical practice;

37 3. tests for use of drugs; or

1 4. tests for the presence of the human immunodeficiency  
2 virus.

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

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

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

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

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

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

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

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

28 (1) providing medical care to patients; or

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

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

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

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

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