

SENATE BILL 2

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HB 793/00 - CGM

2001 Regular Session
11r0381
CF 11r0242

(PRE-FILED)

By: **Senator Forehand**

Requested: August 15, 2000

Introduced and read first time: January 10, 2001

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Genetic Information - Nondiscrimination in Employment**

3 FOR the purpose of making it an unlawful employment practice for an employer to
4 fail or refuse to hire or discharge an individual or other wise 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 2000 Supplement)

14 BY repealing and reenacting, without amendments,
15 Article - Insurance
16 Section 27-909
17 Annotated Code of Maryland
18 (1997 Volume and 2000 Supplement)

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

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

22 15.

23 For the purposes of this subtitle:

24 (a) The term "person" includes one or more individuals, labor unions,
25 partnerships, associations, corporations, legal representatives, mutual companies,
26 joint-stock companies, trusts, unincorporated organizations, trustees, trustees in
27 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 policy making 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 (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 effect
5 October 1, 2001.