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February 29, 2024

Senate Bill 0914 – Human Relations - Protections Against Discrimination - Genetic Procedures

POSITION: Letter of Information

Dear Chairperson Smith, Vice Chairperson Waldstreicher, and Members of the Senate Judicial Proceedings Committee:

The Maryland Commission on Civil Rights (“MCCR”; “The Commission”) is the State agency responsible for the enforcement of laws prohibiting discrimination in employment, housing, public accommodations, health services and state contracts based upon race, color, religion, sex, age, national origin, marital status, familial status, sexual orientation, gender identity, **genetic information**, physical and mental disability, and source of income.

SB 914 seeks to prohibit discrimination based on an individual’s refusal to undergo a genetic procedure in education, public accommodations, commercial leasing, housing, and employment and by certain licensed or regulated persons. This would add “refusal to undergo a genetic procedure” to a list of protected classes in the State’s anti-discrimination statute.

SB 914 endeavors to prevent discrimination for an individual’s refusal to undergo a genetic procedure. State Government Article, Title 20 currently prohibits employers from requesting or requiring a genetic test or providing genetic information as a condition of employment or determining benefits. Specifically, State Government Article, § 20-606 already prohibits an employer from discriminating against an employee for the individual’s genetic information, refusal to submit to a genetic test or make available the results of a genetic test. The protections cover a wide range of employer activities and decision-making responsibilities including hiring, discharging, compensation, terms, conditions, privileges, segregation, limitations, classifications, and the status of their employment. The harm SB 914 seeks to prevent is already accounted for in our current employment discrimination law.

Additionally, the current definition of genetic information and genetic testing are outlined in the State’s Insurance Article, §27-909. SB 914 seeks to include and define “genetic materials” and “genetic procedure.” The definitions overlap in many ways with current definitions; however, this bill expands the scope by adding confusing specificity. For

“Our vision is to have a State that is free from any trace of unlawful discrimination.”

example, “Genetic materials” restates the current definition of genetic information but with additional specificity.

Genetic information currently includes chromosomes, genes, gene products, which can be broken down into smaller subparts which are outlined in this bill’s “genetic materials” definition as DNA, RNA, chromosomes, or genes. Genetic information currently covers therapeutic and diagnostic purposes, but the bill outlines a couple of specific diagnostic purposes such as detection of heritable diseases or conditions, to identify carriers, or to establish a clinical diagnosis.

Currently, genetic testing is defined as a laboratory test of human chromosomes, genes, or gene products that is used to identify the presence or absence of inherited or congenital alterations in genetic material that are associated with disease or illness. “Genetic procedure” is defined as any therapy, treatment, or medical procedure that may add, remove, alter, activate, change, or cause mutation in an individual’s DNA or other genetic materials. Additionally, it includes anything that could replace, supersede, or bypass a normal function of an individual’s DNA or other genetic materials. SB 914 as drafted may cause confusion for employers looking for guidance.

Further, SB 914 is not applicable to all the State’s anti-discrimination categories outlined in the bill. The protections concerning genetics are needed in employment settings because there was significant evidence that genetics was being used to screen applicants and employees out of jobs. The Commission has not received any reports of genetic abuse in commercial leasing, public accommodations, or housing.

Finally, “refusal to undergo genetic procedure” is not a class of persons to include in these sections of Title 20 but is more like an unlawful employment practice in violation of the already included “genetic information”. It may be more appropriate to amend SB 914 to include the term genetic procedures only in the unlawful employment discrimination definition section, SGA, §20-601 (f) and (g) if employees in the State are being asked or required to undergo such actions by their employers.

For these reasons, the Maryland Commission on Civil Rights urges considerations of our concerns regarding SB 0914. Thank you for your time and consideration of the information contained in this letter. The Maryland Commission on Civil Rights looks forward to the continued opportunity to work with you to improve and promote civil rights in Maryland.