By: Delegates Finifter, Benson, Bobo, Bronrott, Clagett, Dypseki, Mandel, McIntosh, Morhaim, Paige, Riley, Rosenberg, and Zirkin

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Assigned to: Commerce and Government Matters

Committee Report: Favorable with amendments
House action: Adopted
Read second time: February 13, 2001

CHAPTER_______

1 AN ACT concerning

Genetic Information - Nondiscrimination in Employment

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

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

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

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

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

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

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

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

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

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

16.

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

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

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

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

(b) It shall be an unlawful employment practice for an employment agency to
fail or refuse to refer for employment, or otherwise to discriminate against, any
individual because of [his] THE INDIVIDUAL'S race, color, religion, sex, age, national
origin, marital status, or disability unrelated in nature and extent so as to reasonably
preclude the performance of the employment, or to classify or refer for employment
any individual on the basis of [his] THE INDIVIDUAL'S race, color, religion, sex, age,
national origin, marital status, or disability unrelated in nature and extent so as to
reasonably preclude the performance of the employment.
(c) It shall be an unlawful employment practice for a labor organization: (1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, age, national origin, marital status, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment; (2) to limit, segregate or classify its membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, age, national origin, marital status, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment; or (3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

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

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

(f) It is an unlawful employment practice for an employer to discriminate against any of its employees or applicants for employment, for an employment agency to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because the individual has opposed any practice made an unlawful employment practice by this subtitle or because the individual has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subtitle.

(g) Notwithstanding any other provision of this subtitle, (1) it is not an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of his THE
INDIVIDUAL'S religion, national origin or disability in those instances where sex, age, religion, national origin or disability is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise; (2) it is not an unlawful employment practice for an employer to establish standards concerning an employee's dress and grooming if the standards are directly related to the nature of the employment of the employee; (3) it is not an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if the school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society or if the curriculum of the school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion; and (4) it is not unlawful for an employer, employment agency or labor organization to observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension or insurance plan, which is not a subterfuge to evade the purposes of this subtitle; however, no employee benefit plan shall excuse the failure to hire any individual.

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

Article - Insurance

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

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

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

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

2. obtained for diagnostic and therapeutic purposes; and
obtained at a time when the individual to whom the information relates is asymptomatic for the disease.

(ii) "Genetic information" does not include:

1. routine physical measurements;
2. chemical, blood, and urine analyses that are widely accepted and in use in clinical practice;
3. tests for use of drugs; or
4. tests for the presence of the human immunodeficiency virus.

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

(5) "Genetic test" means 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.

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

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

1. use a genetic test, the results of a genetic test, genetic information, or a request for genetic services, to reject, deny, limit, cancel, refuse to renew, increase the rates of, affect the terms or conditions of, or otherwise affect a health insurance policy or contract;
2. request or require a genetic test, the results of a genetic test, or genetic information for the purpose of determining whether or not to issue or renew health benefits coverage; or
3. release identifiable genetic information or the results of a genetic test to any person who is not an employee of the insurer, nonprofit health service plan, or health maintenance organization or a participating health care provider who provides medical services to insureds or enrollees without the prior written authorization of the individual from whom the test results or genetic information was obtained.

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

1. providing medical care to patients; or
(2) conducting research that has been approved by an institutional review board established in accordance with federal law.

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

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

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

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2001.