

10 AN ACT CONCERNING

20 **Genetic Information - Nondiscrimination in Employment**

30 FOR the purpose of making it an unlawful employment practice for an employer
40 to fail or refuse to hire or discharge an individual or other wise discriminate
50 against an individual because of the individual's genetic information or the
60 individual's refusal to submit to a genetic test or make available the results of a
70 genetic test; making stylistic changes; defining certain terms; and generally
80 relating to nondiscrimination in employment and genetic information

90 BY repealing and reenacting, with amendments,
100 Article 49B - Human Relations Commission
110 Section 15 and 16
120 Annotated Code of Maryland
130 (1998 Replacement Volume and 2000 Supplement)

140 BY repealing and reenacting, without amendments,
150 Article - Insurance
160 Section 27-909
170 Annotated Code of Maryland
180 (1997 Volume and 2000 Supplement)

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

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

220 15.

230 For the purposes of this subtitle:

- 240 (a) The term "person" includes one or more individuals, labor unions,
250 partnerships, associations, corporations, legal representatives, mutual
260 companies, joint-stock companies, trusts, unincorporated organizations,
270 trustees, trustees in bankruptcy, or receivers.
- 280 (b) The term "employer" means a person engaged in an industry or business
290 who has fifteen or more employees for each working day in each of
300 twenty or more calendar weeks in the current or preceding calendar year,
310 and any agent of such a person; such term does include the State of
320 Maryland to the extent as may be provided in this article but such term
330 does not include a bona fide private membership club (other than a labor
340 organization) which is exempt from taxation under § 501(c) of the Internal
350 Revenue Code.
- 360 (c) The term "employment agency" means any person regularly undertaking
370 with or without compensation to procure employees for an employer or to
380 procure for employees opportunities to work for an employer and includes
390 an agent or such a person; but shall not include an agency of the United
400 States or an agency of the State of Maryland or political subdivision
410 thereof, except such term shall include the United States Employment
420 Service and the system of State and local employment services receiving
430 federal assistance.
- 440 (d) The term "labor organization" means a labor organization engaged in an

450 23 industry and any agent of such an organization, and includes any
460 organization of any kind, any agency, or employee representation
470 committee, group, association, or plan so engaged in which employee
480 participate and which exists for the purpose, in whole or in part, of dealing
490 with employers concerning grievances, labor disputes, wages, rates of pay,
500 hours, or other terms or conditions of employment, and any conference,
510 general committee, joint or system board, or joint council so engaged
520 which is subordinate to a national or international labor organization.

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

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

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

740 (H) "GENETIC INFORMATION" HAS THE MEANING STATED IN §27-
750 909(A)(3) OF THE INSURANCE ARTICLE.

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

780 16.

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

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

900 (2) To limit, segregate, or classify [his] ITS employees or applicants
910 for employment in any way which would deprive or tend to

920 deprive any individual of employment opportunities or otherwise
930 adversely affect [his] THE INDIVIDUAL'S status as an employee,
940 because of the individual's race, color, religion, sex, age, national
950 origin, marital status, GENETIC INFORMATION, or disability
960 unrelated in nature and extent so as to reasonably preclude the
970 performance of the employment, OR BECAUSE OF THE
980 INDIVIDUAL'S REFUSAL TO SUBMIT TO A GENETIC TEST
990 OR MAKE AVAILABLE THE RESULTS OF A GENETIC
1000 TEST; OR

1010 (3) TO REQUEST OR REQUIRE GENETIC TESTS OR GENETIC
1020 INFORMATION AS A CONDITION FOR HIRING OR
1030 DETERMINING BENEFITS.

1040 (b) It shall be an unlawful employment practice for an employment agency to
1050 fail or refuse to refer for employment, or otherwise to discriminate against,
1060 any individual because of [his] THE INDIVIDUAL'S race, color, religion,
1070 sex, age, national origin, marital status, or disability unrelated in nature
1080 and extent so as to reasonably preclude the performance of the
1090 employment, or to classify or refer for employment any individual on the
1100 basis of [his] THE INDIVIDUAL'S race, color, religion, sex, age,
1110 national origin, marital status, or disability unrelated in nature and extent
1120 so as to reasonably preclude the performance of the employment.

1130 (c) It shall be an unlawful employment practice for a labor organization: (1) to
1140 exclude or to expel from its membership, or otherwise to discriminate
1150 against, any individual because of [his] THE INDIVIDUAL'S race, color,
1160 religion, sex, age, national origin, marital status, or disability unrelated in
1170 nature and extent so as to reasonably preclude the performance of the
1180 employment; (2) to limit, segregate or classify its membership, or to
1190 classify or fail or refuse to refer for employment any individual, in any
1200 way which would deprive or tend to deprive any individual of
1210 employment opportunities, or would limit such employment opportunities
1220 or otherwise adversely affect THE INDIVIDUAL'S status as an employee
1230 or as an applicant for employment, because of such individual's race,
1240 color, religion, sex, age, national origin, marital status, or disability
1250 unrelated in nature and extent so as to reasonably preclude the
1260 performance of the employment; or (3) to cause or attempt to cause an
1270 employer to discriminate against an individual in violation of this section.

1280 (d) It shall be an unlawful employment practice for any employer, labor
1290 organization, or joint labor-management committee controlling
1300 apprenticeship or other training or retraining, including on-the-job training
1310 programs to discriminate against any individual because of THE
1320 INDIVIDUAL'S race, color, religion, sex, age, national origin, marital
1330 status, or disability unrelated in nature or extent so as to reasonably
1340 preclude the performance of the employment in admission to, or
1350 employment in, any program established to provide apprenticeship or
1360 other training.

1370 (e) It is an unlawful employment practice for an employer, labor organization,
1380 or employment agency to print or cause to be printed or published any
1390 notice or advertisement relating to employment by the employer or
1400 membership in or any classification or referral for employment by the
1410 labor organization, or relating to any classification or referral for
1420 employment by the agency, indicating any preference, limitation,

1430 specification, or discrimination, based on race, color, religion, sex, age,
1440 national origin or on the basis of a disability. However, a notice or
1450 advertisement may indicate a preference, limitation, specification, or
1460 discrimination based on religion, sex, age, national origin or disability
1470 when religion, sex, age, national origin or disability is a bona fide
1480 occupational qualification for employment.

1490 (f) It is an unlawful employment practice for an employer to discriminate
1500 against any of [his] ITS employees or applicants for employment, for an
1510 employment agency to discriminate against any individual, or for a labor
1520 organization to discriminate against any member thereof or applicant for
1530 membership, because THE INDIVIDUAL has opposed any practice made
1540 an unlawful employment practice by this subtitle or because THE
1550 INDIVIDUAL has made a charge, testified, assisted, or participated in any
1560 manner in an investigation, proceeding, or hearing under this subtitle.

1570 (g) Notwithstanding any other provision of this subtitle, (1) it is not an
1580 unlawful employment practice for an employer to hire and employ
1590 employees, for an employment agency to classify, or refer for employment
1600 any individual, for a labor organization to classify its membership or to
1610 classify or refer for employment any individual, or for an employer, labor
1620 organization or joint labor-management committee controlling
1630 apprenticeship or other training or retraining programs to admit or employ
1640 any individual in any such program, on the basis of THE INDIVIDUAL'S
1650 religion, national origin or disability in those instances where sex, age,
1660 religion, national origin or disability is a bona fide occupational
1670 qualification reasonably necessary to the normal operation of that
1680 particular business or enterprise; (2) it is not an unlawful employment
1690 practice for an employer to establish standards concerning an employee's
1700 dress and grooming if the standards are directly related to the nature of the
1710 employment of the employee; (3) it is not an unlawful employment
1720 practice for a school, college, university, or other educational institution
1730 or institution of learning to hire and employ employees of a particular
1740 religion if the school, college, university, or other educational institution
1750 or institution of learning is, in whole or in substantial part, owned,
1760 supported, controlled, or managed by a particular religion or by a
1770 particular religious corporation, association, or society or if the curriculum
1780 of the school, college, university, or other educational institution or
1790 institution of learning is directed toward the propagation of a particular
1800 religion; and (4) it is not unlawful for an employer, employment agency or
1810 labor organization to observe the terms of a bona fide seniority system or
1820 any bona fide employee benefit plan such as a retirement, pension or
1830 insurance plan, which is not a subterfuge to evade the purposes of this
1840 subtitle; however, no employee benefit plan shall excuse the failure to hire
1850 any individual.

1860 (h) Nothing contained in this subtitle shall be interpreted to require any
1870 employer, employment agency, labor organization, or joint labor-
1880 management committee subject to this subtitle to grant preferential
1890 treatment to any individual or to any group because of the race, color,
1900 religion, sex, age, national origin or disability of the individual or group
1910 on account of an imbalance which may exist with respect to the total
1920 number or percentage of persons of any race, color, religion, sex, age,
1930 national origin or persons with disabilities employed by any employer,
1940 referred or classified for employment by any employment agency or labor
1950 organization, admitted to membership or classified by any labor agency or

1960 labor organization, admitted to membership or classified by any labor
1970 organization, or admitted to, or employed in, any apprenticeship or other
1980 training program, in comparison with the total number or percentage of
1990 persons of such race, color, religion, sex, age, national origin, or persons
2000 with disabilities in any community, State, section, or other area, or in the
2010 available work force in any community, State, section, or other area.

2020

Article - Insurance

2030 **27-909.**

2040 (a) (1) In this section the following words have the meanings indicated.

2050 (2) "Gene product" means the biochemical material, either RNA or
2060 protein, made by a gene.

2070 (3) (i) "Genetic information" means information:

2080 1. about chromosomes, genes, gene products, or
2090 inherited characteristics that may derive from an
2100 individual or a family member;

2110 2. obtained for diagnostic and therapeutic purposes;
2120 and,

2130 3. obtained at a time when the individual to whom the
2140 information relates is asymptomatic for the disease.

2150 (ii) "Genetic information" does not include:

2160 1. routine physical measurements;

2170 2. chemical, blood, and urine analyses that are widely
2180 accepted and in use in clinical practice;

2190 3. tests for use of drugs; or

2200 4. tests for the presence of the human
2210 immunodeficiency virus.

2220 (4) "Genetic services" means health services that are provided to
2230 obtain, assess, and interpret genetic information for diagnostic and
2240 therapeutic purposes and for genetic education and counseling.

2250 (5) "Genetic test" means a laboratory test of human chromosomes,
2260 genes, or gene products that is used to identify the presence or
2270 absence of inherited or congenital alterations in genetic material
2280 that are associated with disease or illness.

2290 (b) This section does not apply to life insurance policies, annuity contracts,
2300 long-term care insurance policies, or disability insurance policies.

2310 (c) An insurer, nonprofit health service plan, or health maintenance
2320 organization may not:

2330 (1) use a genetic test, the results of a genetic test, genetic information,

- 2340 or a request for genetic services, to reject, deny, limit, cancel,
2350 refuse to renew, increase the rates of, affect the terms or conditions
2360 of, or otherwise affect a health insurance policy or contract;
- 2370 (2) request or require a genetic test, the results of a genetic test, or
2380 genetic information for the purpose of determining whether or not
2390 to issue or renew health benefits coverage; or
- 2400 (3) release identifiable genetic information or the results of a genetic
2410 test to any person who is not an employee of the insurer, nonprofit
2420 health service plan, or health maintenance organization or a
2430 participating health care provider who provides medical services to
2440 insureds or enrollees without the prior written authorization of
2450 the individual from whom the test results or genetic information
2460 was obtained.
- 2470 (d) Disclosure of identifiable genetic information to an employee or health
2480 care provider authorized under subsection (c)(3) of this section shall only
2490 be for the purpose of:
- 2500 (1) providing medical care to patients; or
- 2510 (2) conducting research that has been approved by an institutional
2520 review board established in accordance with federal law.
- 2530 (e) The authorization described in subsection (c)(3) of this section is required
2540 for each disclosure and shall describe the individual or entities making the
2550 disclosure, to whom the disclosure is to be made, and the information to
2560 be disclosed.
- 2570 (f) (1) For purposes of this subsection, §§ 4-113, 4-114, 27-501, and
2580 27-505 of this article apply to nonprofit health service plans and
2590 health maintenance organizations.
- 2600 (2) The Commissioner may issue an order under §§ 4-113, 4-114,
2610 27-501, and 27-505 of this article if the Commissioner finds a
2620 violation of this section.

2630 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2640 October 1, 2002.

2650 MANDATES: Governor Parris N. Glendening
2660 Lieutenant Governor Kathleen Kennedy Townsend
2670 Senator Jenin M. Forehand
2680 Delegate Sue C. Hecht

Sponsor:

The Governor
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