

HOUSE BILL 18

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HB 793/00 - CGM

2001 Regular Session  
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(PRE-FILED)

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

Requested: June 26, 2000  
Introduced and read first time: January 10, 2001  
Assigned to: Commerce and Government Matters

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

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CHAPTER \_\_\_\_\_

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 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; 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:

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

2 15.

3 For the purposes of this subtitle:

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

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

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

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

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

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

40 (g) The term "disability" means any physical disability, infirmity,  
41 malformation or disfigurement which is caused by bodily injury, birth defect or illness

1 including epilepsy, and which shall include, but not be limited to, any degree of  
2 paralysis, amputation, lack of physical coordination, blindness or visual impairment,  
3 deafness or hearing impairment, muteness or speech impediment or physical reliance  
4 on a seeing eye dog, wheelchair, or other remedial appliance or device; and any  
5 mental impairment or deficiency as, but not limited to, retardation or such other  
6 which may have necessitated remedial or special education and related services.

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

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

11 16.

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

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

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

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

34 (b) It shall be an unlawful employment practice for an employment agency to  
35 fail or refuse to refer for employment, or otherwise to discriminate against, any  
36 individual because of [his] THE INDIVIDUAL'S race, color, religion, sex, age, national  
37 origin, marital status, or disability unrelated in nature and extent so as to reasonably  
38 preclude the performance of the employment, or to classify or refer for employment  
39 any individual on the basis of [his] THE INDIVIDUAL'S race, color, religion, sex, age,  
40 national origin, marital status, or disability unrelated in nature and extent so as to  
41 reasonably preclude the performance of the employment.

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

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

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

31 (f) It is an unlawful employment practice for an employer to discriminate  
32 against any of [his] ITS employees or applicants for employment, for an employment  
33 agency to discriminate against any individual, or for a labor organization to  
34 discriminate against any member thereof or applicant for membership, because [he]  
35 THE INDIVIDUAL has opposed any practice made an unlawful employment practice by  
36 this subtitle or because [he] THE INDIVIDUAL has made a charge, testified, assisted,  
37 or participated in any manner in an investigation, proceeding, or hearing under this  
38 subtitle.

39 (g) Notwithstanding any other provision of this subtitle, (1) it is not an  
40 unlawful employment practice for an employer to hire and employ employees, for an  
41 employment agency to classify, or refer for employment any individual, for a labor  
42 organization to classify its membership or to classify or refer for employment any  
43 individual, or for an employer, labor organization or joint labor-management  
44 committee controlling apprenticeship or other training or retraining programs to  
45 admit or employ any individual in any such program, on the basis of [his] THE

1 INDIVIDUAL'S religion, national origin or disability in those instances where sex, age,  
2 religion, national origin or disability is a bona fide occupational qualification  
3 reasonably necessary to the normal operation of that particular business or  
4 enterprise; (2) it is not an unlawful employment practice for an employer to establish  
5 standards concerning an employee's dress and grooming if the standards are directly  
6 related to the nature of the employment of the employee; (3) it is not an unlawful  
7 employment practice for a school, college, university, or other educational institution  
8 or institution of learning to hire and employ employees of a particular religion if the  
9 school, college, university, or other educational institution or institution of learning is,  
10 in whole or in substantial part, owned, supported, controlled, or managed by a  
11 particular religion or by a particular religious corporation, association, or society or if  
12 the curriculum of the school, college, university, or other educational institution or  
13 institution of learning is directed toward the propagation of a particular religion; and  
14 (4) it is not unlawful for an employer, employment agency or labor organization to  
15 observe the terms of a bona fide seniority system or any bona fide employee benefit  
16 plan such as a retirement, pension or insurance plan, which is not a subterfuge to  
17 evade the purposes of this subtitle; however, no employee benefit plan shall excuse  
18 the failure to hire any individual.

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

33

#### Article - Insurance

34 27-909.

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

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

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

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

41 2. obtained for diagnostic and therapeutic purposes; and

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

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

4 1. routine physical measurements;

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

7 3. tests for use of drugs; or

8 4. tests for the presence of the human immunodeficiency  
9 virus.

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

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

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

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

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

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

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

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

35 (1) providing medical care to patients; or

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

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

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

9           (2)       The Commissioner may issue an order under §§ 4-113, 4-114,  
10 27-501, and 27-505 of this article if the Commissioner finds a violation of this  
11 section.

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