

ASSEMBLY, No. 1411

STATE OF NEW JERSEY

INTRODUCED JANUARY 29, 1996

By Assemblyman DORIA

1 AN ACT concerning genetic testing and genetic privacy, amending
2 N.J.S.17B:30-12 and amending and supplementing P.L.1945, c.169.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. This act shall be known and may be cited as the "Genetic Privacy
8 Act."

9

10 2. N.J.S.17B:30-12 is amended to read as follows:

11 a. No person shall discriminate against any person or group of
12 persons because of race, creed, color, national origin or ancestry of
13 such person or group of persons in the issuance, withholding,
14 extension or renewal of any policy of life or health insurance or
15 annuity or in the fixing of the rates, terms or conditions therefor, or in
16 the issuance or acceptance of any application therefor.

17 b. No person shall use any form of policy of life or health insurance
18 or contract of annuity which expresses, directly or indirectly, any
19 limitation, or discrimination as to race, creed, color, national origin or
20 ancestry or any intent to make any such limitation or discrimination.

21 c. No person shall make or permit any unfair discrimination
22 between individuals of the same class and equal expectation of life in
23 the rates charged for any policy of life insurance or contract of annuity
24 or in the dividends or other benefits payable thereon, or in any other
25 of the terms and conditions of such policy of life insurance or contract
26 of annuity.

27 d. No person shall make or permit any unfair discrimination
28 between individuals of the same class and of essentially the same
29 hazard in the amount of premium, policy fees, or rates charged for any
30 policy or contract of health insurance or in the benefits payable
31 thereunder, or in any of the terms or conditions of such policy or
32 contract, or in any other manner whatever.

33 e. No person shall discriminate against any person on the basis of
34 genetic information in the issuance, withholding, extension or renewal

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 of any policy of life or health insurance or annuity or in the fixing of
2 the rates, terms or conditions therefor, or in the issuance or acceptance
3 of any application therefor.

4 As used in this subsection:

5 "Genetic characteristic" means any gene or chromosome, or
6 alteration thereof, that is scientifically or medically believed to cause
7 a disease, disorder or syndrome, or to be associated with statistically
8 increased risk of development of a disease, disorder or syndrome.

9 "Genetic information" means the information about an individual or
10 family obtained from a genetic test or an individual's DNA sample.

11 "Genetic test" means a test for determining the presence or absence
12 of genetic characteristics in an individual, including tests of nucleic
13 acids such as DNA, RNA and mitochondrial DNA, chromosomes or
14 proteins in order to diagnose a genetic characteristic.

15 f. Nothing contained in this section shall be construed to require
16 any agent or company to take or receive the application for insurance
17 or annuity of any person or to issue a policy of insurance or contract
18 of annuity to any person.

19 (cf: N.J.S.17B:30-12)

20

21 3. Section 5 of P.L.1945, c.169 (C.10:5-5) is amended to read as
22 follows:

23 5. As used in this act, unless a different meaning clearly appears
24 from the context:

25 a. "Person" includes one or more individuals, partnerships,
26 associations, organizations, labor organizations, corporations, legal
27 representatives, trustees, trustees in bankruptcy, receivers, and
28 fiduciaries.

29 b. "Employment agency" includes any person undertaking to
30 procure employees or opportunities for others to work.

31 c. "Labor organization" includes any organization which exists and
32 is constituted for the purpose, in whole or in part, of collective
33 bargaining, or of dealing with employers concerning grievances, terms
34 or conditions of employment, or of other mutual aid or protection in
35 connection with employment.

36 d. "Unlawful employment practice" and "unlawful discrimination"
37 include only those unlawful practices and acts specified in section 11
38 of this act.

39 e. "Employer" includes all persons as defined in subsection a. of
40 this section unless otherwise specifically exempt under another section
41 of this act, and includes the State, any political or civil subdivision
42 thereof, and all public officers, agencies, boards or bodies.

43 f. "Employee" does not include any individual employed in the
44 domestic service of any person.

45 g. "Liability for service in the Armed Forces of the United States"
46 means subject to being ordered as an individual or member of an

1 organized unit into active service in the Armed Forces of the United
2 States by reason of membership in the National Guard, naval militia or
3 a reserve component of the Armed Forces of the United States, or
4 subject to being inducted into such armed forces through a system of
5 national selective service.

6 h. "Division" means the "Division on Civil Rights" created by this
7 act.

8 i. "Attorney General" means the Attorney General of the State of
9 New Jersey or his representative or designee.

10 j. "Commission" means the Commission on Civil Rights created by
11 this act.

12 k. "Director" means the Director of the Division on Civil Rights.

13 l. "A place of public accommodation" shall include, but not be
14 limited to: any tavern, roadhouse, hotel, motel, trailer camp,
15 summer camp, day camp, or resort camp, whether for entertainment
16 of transient guests or accommodation of those seeking health,
17 recreation or rest; any producer, manufacturer, wholesaler,
18 distributor, retail shop, store, establishment, or concession dealing
19 with goods or services of any kind; any restaurant, eating house, or
20 place where food is sold for consumption on the premises; any place
21 maintained for the sale of ice cream, ice and fruit preparations or their
22 derivatives, soda water or confections, or where any beverages of any
23 kind are retailed for consumption on the premises; any garage, any
24 public conveyance operated on land or water, or in the air, any stations
25 and terminals thereof; any bathhouse, boardwalk, or seashore
26 accommodation; any auditorium, meeting place, or hall; any theatre,
27 motion-picture house, music hall, roof garden, skating rink, swimming
28 pool, amusement and recreation park, fair, bowling alley, gymnasium,
29 shooting gallery, billiard and pool parlor, or other place of amusement;
30 any comfort station; any dispensary, clinic or hospital; any public
31 library; any kindergarten, primary and secondary school, trade or
32 business school, high school, academy, college and university, or any
33 educational institution under the supervision of the State Board of
34 Education, or the Commissioner of Education of the State of New
35 Jersey. Nothing herein contained shall be construed to include or to
36 apply to any institution, bona fide club, or place of accommodation,
37 which is in its nature distinctly private; nor shall anything herein
38 contained apply to any educational facility operated or maintained by
39 a bona fide religious or sectarian institution, and the right of a natural
40 parent or one in loco parentis to direct the education and upbringing
41 of a child under his control is hereby affirmed; nor shall anything
42 herein contained be construed to bar any private secondary or post
43 secondary school from using in good faith criteria other than race,
44 creed, color, national origin, ancestry or affectional or sexual
45 orientation in the admission of students.

46 m. "A publicly assisted housing accommodation" shall include all

1 housing built with public funds or public assistance pursuant to
2 P.L.1949, c.300, P.L.1941, c.213, P.L.1944, c.169, P.L.1949, c.303,
3 P.L.1938, c.19, P.L.1938, c.20, P.L.1946, c.52, and P.L.1949, c.184,
4 and all housing financed in whole or in part by a loan, whether or not
5 secured by a mortgage, the repayment of which is guaranteed or
6 insured by the federal government or any agency thereof.

7 n. The term "real property" includes real estate, lands, tenements
8 and hereditaments, corporeal and incorporeal, and leaseholds,
9 provided, however, that, except as to publicly assisted housing
10 accommodations, the provisions of this act shall not apply to the
11 rental: (1) of a single apartment or flat in a two-family dwelling, the
12 other occupancy unit of which is occupied by the owner as a residence
13 or the household of the owner's family at the time of such rental; or (2)
14 of a room or rooms to another person or persons by the owner or
15 occupant of a one-family dwelling occupied by the owner or occupant
16 as a residence or the household of the owner's or occupant's family at
17 the time of such rental. Nothing herein contained shall be construed
18 to bar any religious or denominational institution or organization, or
19 any organization operated for charitable or educational purposes,
20 which is operated, supervised or controlled by or in connection with
21 a religious organization, in the sale, lease or rental of real property,
22 from limiting admission to or giving preference to persons of the same
23 religion or denomination or from making such selection as is
24 calculated by such organization to promote the religious principles for
25 which it is established or maintained. Nor does any provision under
26 this act regarding discrimination on the basis of familial status apply
27 with respect to housing for older persons.

28 o. "Real estate broker" includes a person, firm or corporation who,
29 for a fee, commission or other valuable consideration, or by reason of
30 promise or reasonable expectation thereof, lists for sale, sells,
31 exchanges, buys or rents, or offers or attempts to negotiate a sale,
32 exchange, purchase, or rental of real estate or an interest therein, or
33 collects or offers or attempts to collect rent for the use of real estate,
34 or solicits for prospective purchasers or assists or directs in the
35 procuring of prospects or the negotiation or closing of any transaction
36 which does or is contemplated to result in the sale, exchange, leasing,
37 renting or auctioning of any real estate, or negotiates, or offers or
38 attempts or agrees to negotiate a loan secured or to be secured by
39 mortgage or other encumbrance upon or transfer of any real estate for
40 others; or any person who, for pecuniary gain or expectation of
41 pecuniary gain conducts a public or private competitive sale of lands
42 or any interest in lands. In the sale of lots, the term "real estate
43 broker" shall also include any person, partnership, association or
44 corporation employed by or on behalf of the owner or owners of lots
45 or other parcels of real estate, at a stated salary, or upon a
46 commission, or upon a salary and commission or otherwise, to sell

1 such real estate, or any parts thereof, in lots or other parcels, and who
2 shall sell or exchange, or offer or attempt or agree to negotiate the
3 sale or exchange, of any such lot or parcel of real estate.

4 p. "Real estate salesperson" includes any person who, for
5 compensation, valuable consideration or commission, or other thing of
6 value, or by reason of a promise or reasonable expectation thereof, is
7 employed by and operates under the supervision of a licensed real
8 estate broker to sell or offer to sell, buy or offer to buy or negotiate
9 the purchase, sale or exchange of real estate, or offers or attempts to
10 negotiate a loan secured or to be secured by a mortgage or other
11 encumbrance upon or transfer of real estate, or to lease or rent, or
12 offer to lease or rent any real estate for others, or to collect rents for
13 the use of real estate, or to solicit for prospective purchasers or lessees
14 of real estate, or who is employed by a licensed real estate broker to
15 sell or offer to sell lots or other parcels of real estate, at a stated
16 salary, or upon a commission, or upon a salary and commission, or
17 otherwise to sell real estate, or any parts thereof, in lots or other
18 parcels.

19 q. "Handicapped" means suffering from physical disability,
20 infirmity, malformation or disfigurement which is caused by bodily
21 injury, birth defect or illness including epilepsy, and which shall
22 include, but not be limited to, any degree of paralysis, amputation, lack
23 of physical coordination, blindness or visual impediment, deafness or
24 hearing impediment, muteness or speech impediment or physical
25 reliance on a service or guide dog, wheelchair, or other remedial
26 appliance or device, or from any mental, psychological or
27 developmental disability resulting from anatomical, psychological,
28 physiological or neurological conditions which prevents the normal
29 exercise of any bodily or mental functions or is demonstrable,
30 medically or psychologically, by accepted clinical or laboratory
31 diagnostic techniques. Handicapped shall also mean suffering from
32 AIDS or HIV infection.

33 r. "Blind person" means any individual whose central visual acuity
34 does not exceed 20/200 in the better eye with correcting lens or whose
35 visual acuity is better than 20/200 if accompanied by a limit to the field
36 of vision in the better eye to such a degree that its widest diameter
37 subtends an angle of no greater than 20 degrees.

38 s. "Guide dog" means a dog used to assist deaf persons or which
39 is fitted with a special harness so as to be suitable as an aid to the
40 mobility of a blind person, and is used by a blind person who has
41 satisfactorily completed a specific course of training in the use of such
42 a dog, and has been trained by an organization generally recognized by
43 agencies involved in the rehabilitation of the blind or deaf as reputable
44 and competent to provide dogs with training of this type.

45 t. "Guide or service dog trainer" means any person who is
46 employed by an organization generally recognized by agencies

1 involved in the rehabilitation of the blind, handicapped or deaf as
2 reputable and competent to provide dogs with training, and who is
3 actually involved in the training process.

4 u. "Housing accommodation" means any publicly assisted housing
5 accommodation or any real property, or portion thereof, which is used
6 or occupied, or is intended, arranged, or designed to be used or
7 occupied, as the home, residence or sleeping place of one or more
8 persons, but shall not include any single family residence the occupants
9 of which rent, lease, or furnish for compensation not more than one
10 room therein.

11 v. "Public facility" means any place of public accommodation and
12 any street, highway, sidewalk, walkway, public building, and any other
13 place or structure to which the general public is regularly, normally or
14 customarily permitted or invited.

15 w. "Deaf person" means any person whose hearing is so severely
16 impaired that the person is unable to hear and understand normal
17 conversational speech through the unaided ear alone, and who must
18 depend primarily on supportive device or visual communication such
19 as writing, lip reading, sign language, and gestures.

20 x. "Atypical hereditary cellular or blood trait" means sickle cell
21 trait, hemoglobin C trait, thalassemia trait, Tay-Sachs trait, or cystic
22 fibrosis trait.

23 y. "Sickle cell trait" means the condition wherein the major natural
24 hemoglobin components present in the blood of the individual are
25 hemoglobin A (normal) and hemoglobin S (sickle hemoglobin) as
26 defined by standard chemical and physical analytic techniques,
27 including electrophoresis; and the proportion of hemoglobin A is
28 greater than the proportion of hemoglobin S or one natural parent of
29 the individual is shown to have only normal hemoglobin components
30 (hemoglobin A, hemoglobin A2, hemoglobin F) in the normal
31 proportions by standard chemical and physical analytic tests.

32 z. "Hemoglobin C trait" means the condition wherein the major
33 natural hemoglobin components present in the blood of the individual
34 are hemoglobin A (normal) and hemoglobin C as defined by standard
35 chemical and physical analytic techniques, including electrophoresis;
36 and the proportion of hemoglobin A is greater than the proportion of
37 hemoglobin C or one natural parent of the individual is shown to have
38 only normal hemoglobin components (hemoglobin A, hemoglobin A2,
39 hemoglobin F) in normal proportions by standard chemical and
40 physical analytic tests.

41 aa. "Thalassemia trait" means the presence of the thalassemia gene
42 which in combination with another similar gene results in the chronic
43 hereditary disease Cooley's anemia.

44 bb. "Tay-Sachs trait" means the presence of the Tay-Sachs gene
45 which in combination with another similar gene results in the chronic
46 hereditary disease Tay-Sachs.

- 1 cc. "Cystic fibrosis trait" means the presence of the cystic fibrosis
2 gene which in combination with another similar gene results in the
3 chronic hereditary disease cystic fibrosis.
- 4 dd. "Service dog" means any dog individually trained to a
5 handicapped person's requirements including, but not limited to
6 minimal protection work, rescue work, pulling a wheelchair or
7 retrieving dropped items.
- 8 ee. "Qualified Medicaid applicant" means an individual who is a
9 qualified applicant pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.).
- 10 ff. "AIDS" means acquired immune deficiency syndrome as defined
11 by the Centers for Disease Control of the United States Public Health
12 Service.
- 13 gg. "HIV infection" means infection with the human
14 immunodeficiency virus or any other related virus identified as a
15 probable causative agent of AIDS.
- 16 hh. "Affectional or sexual orientation" means male or female
17 heterosexuality, homosexuality or bisexuality by inclination, practice,
18 identity or expression, having a history thereof or being perceived,
19 presumed or identified by others as having such an orientation.
- 20 ii. "Heterosexuality" means affectional, emotional or physical
21 attraction or behavior which is primarily directed towards persons of
22 the other gender.
- 23 jj. "Homosexuality" means affectional, emotional or physical
24 attraction or behavior which is primarily directed towards persons of
25 the same gender.
- 26 kk. "Bisexuality" means affectional, emotional or physical
27 attraction or behavior which is directed towards persons of either
28 gender.
- 29 ll. "Familial status" means being the natural parent of a child, the
30 adoptive parent of a child, the foster parent of a child, having a "parent
31 and child relationship" with a child as defined by State law, or having
32 sole or joint legal or physical custody, care, guardianship, or visitation
33 with a child, or any person who is pregnant or is in the process of
34 securing legal custody of any individual who has not attained the age
35 of 18 years.
- 36 mm. "Housing for older persons" means housing:
- 37 (1) provided under any State or federal program that the Attorney
38 General determines is specifically designed and operated to assist
39 elderly persons (as defined in the State or federal program); or
- 40 (2) intended for, and solely occupied by persons 62 years of age or
41 older; or
- 42 (3) intended and operated for occupancy by at least one person 55
43 years of age or older per unit. In determining whether housing
44 qualifies as housing for older persons under this subsection, the
45 Attorney General shall adopt regulations which require at least the
46 following factors:

1 (a) the existence of significant facilities and services specifically
2 designed to meet the physical or social needs of older persons, or if the
3 provision of such facilities and services is not practicable, that such
4 housing is necessary to provide important housing opportunities for
5 older persons; and

6 (b) that at least 80 percent of the units are occupied by at least one
7 person 55 years of age or older per unit; and

8 (c) the publication of, and adherence to, policies and procedures
9 which demonstrate an intent by the owner or manager to provide
10 housing for persons 55 years of age or older.

11 Housing shall not fail to meet the requirements for housing for
12 older persons by reason of: persons residing in such housing as of
13 March 12, 1989 not meeting the age requirements of this subsection,
14 provided that new occupants of such housing meet the age
15 requirements of this subsection; or unoccupied units, provided that
16 such units are reserved for occupancy by persons who meet the age
17 requirements of this subsection.

18 nn. "Genetic characteristic" means any gene or chromosome, or
19 alteration thereof, that is scientifically or medically believed to cause
20 a disease, disorder or syndrome, or to be associated with statistically
21 increased risk of development of a disease, disorder or syndrome.

22 oo. "Genetic information" means the information about an
23 individual or family obtained from a genetic test or an individual's
24 DNA sample.

25 pp. "Genetic test" means a test for determining the presence or
26 absence of genetic characteristics in an individual, including tests of
27 nucleic acids such as DNA, RNA and mitochondrial DNA,
28 chromosomes or proteins in order to diagnose a genetic characteristic.

29 (cf: P.L.1992, c.146, s.4)

30
31 4. Section 11 of P.L.1945, c.169 (C.10:5-12) is amended to read
32 as follows:

33 11. It shall be an unlawful employment practice, or, as the case
34 may be, an unlawful discrimination:

35 a. For an employer, because of the race, creed, color, national
36 origin, ancestry, age, marital status, affectional or sexual orientation,
37 genetic information, sex or atypical hereditary cellular or blood trait
38 of any individual, or because of the liability for service in the Armed
39 Forces of the United States or the nationality of any individual, or
40 because of the refusal to submit to a genetic test, to refuse to hire or
41 employ or to bar or to discharge or require to retire, unless justified by
42 lawful considerations other than age, from employment such individual
43 or to discriminate against such individual in compensation or in terms,
44 conditions or privileges of employment; provided, however, it shall not
45 be an unlawful employment practice to refuse to accept for
46 employment an applicant who has received a notice of induction or

1 orders to report for active duty in the armed forces; provided further
2 that nothing herein contained shall be construed to bar an employer
3 from refusing to accept for employment any person on the basis of sex
4 in those certain circumstances where sex is a bona fide occupational
5 qualification, reasonably necessary to the normal operation of the
6 particular business or enterprise; provided further that nothing herein
7 contained shall bar an employer from requiring an employee or
8 prospective employee to submit to a genetic test which complies with
9 the provisions of sections 4 through 7 of P.L. , c. (C.)(pending
10 before the Legislature as this bill) in order to determine a bona fide
11 occupational qualification; provided further that nothing herein
12 contained shall be construed to bar an employer from refusing to
13 accept for employment or to promote any person over 70 years of age;
14 provided further that it shall not be an unlawful employment practice
15 for a club exclusively social or fraternal to use club membership as a
16 uniform qualification for employment, or for a religious association or
17 organization to utilize religious affiliation as a uniform qualification in
18 the employment of clergy, religious teachers or other employees
19 engaged in the religious activities of the association or organization,
20 or in following the tenets of its religion in establishing and utilizing
21 criteria for employment of an employee; provided further, that it shall
22 not be an unlawful employment practice to require the retirement of
23 any employee who, for the two-year period immediately before
24 retirement, is employed in a bona fide executive or a high
25 policy-making position, if that employee is entitled to an immediate
26 non-forfeitable annual retirement benefit from a pension, profit
27 sharing, savings or deferred retirement plan, or any combination of
28 those plans, of the employer of that employee which equals in the
29 aggregate at least \$27,000.00; and provided further that an employer
30 may restrict employment to citizens of the United States where such
31 restriction is required by federal law or is otherwise necessary to
32 protect the national interest.

33 For the purposes of this subsection, a "bona fide executive" is a top
34 level employee who exercises substantial executive authority over a
35 significant number of employees and a large volume of business. A
36 "high policy-making position" is a position in which a person plays a
37 significant role in developing policy and in recommending the
38 implementation thereof.

39 b. For a labor organization, because of the race, creed, color,
40 national origin, ancestry, age, marital status, affectional or sexual
41 orientation or sex of any individual, or because of the liability for
42 service in the Armed Forces of the United States or nationality of any
43 individual, to exclude or to expel from its membership such individual
44 or to discriminate in any way against any of its members, against any
45 applicant for, or individual included in, any apprentice or other training
46 program or against any employer or any individual employed by an

1 employer; provided, however, that nothing herein contained shall be
2 construed to bar a labor organization from excluding from its
3 apprentice or other training programs any person on the basis of sex
4 in those certain circumstances where sex is a bona fide occupational
5 qualification reasonably necessary to the normal operation of the
6 particular apprentice or other training program.

7 c. For any employer or employment agency to print or circulate or
8 cause to be printed or circulated any statement, advertisement or
9 publication, or to use any form of application for employment, or to
10 make an inquiry in connection with prospective employment, which
11 expresses, directly or indirectly, any limitation, specification or
12 discrimination as to race, creed, color, national origin, ancestry, age,
13 marital status, affectional or sexual orientation or sex or liability of any
14 applicant for employment for service in the Armed Forces of the
15 United States, or any intent to make any such limitation, specification
16 or discrimination, unless based upon a bona fide occupational
17 qualification.

18 d. For any person to take reprisals against any person because that
19 person has opposed any practices or acts forbidden under this act or
20 because that person has filed a complaint, testified or assisted in any
21 proceeding under this act or to coerce, intimidate, threaten or interfere
22 with any person in the exercise or enjoyment of, or on account of that
23 person having aided or encouraged any other person in the exercise or
24 enjoyment of, any right granted or protected by this act.

25 e. For any person, whether an employer or an employee or not, to
26 aid, abet, incite, compel or coerce the doing of any of the acts
27 forbidden under this act, or to attempt to do so.

28 f. For any owner, lessee, proprietor, manager, superintendent,
29 agent, or employee of any place of public accommodation directly or
30 indirectly to refuse, withhold from or deny to any person any of the
31 accommodations, advantages, facilities or privileges thereof, or to
32 discriminate against any person in the furnishing thereof, or directly or
33 indirectly to publish, circulate, issue, display, post or mail any written
34 or printed communication, notice, or advertisement to the effect that
35 any of the accommodations, advantages, facilities, or privileges of any
36 such place will be refused, withheld from, or denied to any person on
37 account of the race, creed, color, national origin, ancestry, marital
38 status, sex, affectional or sexual orientation or nationality of such
39 person, or that the patronage or custom thereof of any person of any
40 particular race, creed, color, national origin, ancestry, marital status,
41 sex, affectional or sexual orientation or nationality is unwelcome,
42 objectionable or not acceptable, desired or solicited, and the
43 production of any such written or printed communication, notice or
44 advertisement, purporting to relate to any such place and to be made
45 by any owner, lessee, proprietor, superintendent or manager thereof,
46 shall be presumptive evidence in any action that the same was

1 authorized by such person; provided, however, that nothing contained
2 herein shall be construed to bar any place of public accommodation
3 which is in its nature reasonably restricted exclusively to individuals of
4 one sex, and which shall include but not be limited to any summer
5 camp, day camp, or resort camp, bathhouse, dressing room, swimming
6 pool, gymnasium, comfort station, dispensary, clinic or hospital, or
7 school or educational institution which is restricted exclusively to
8 individuals of one sex, from refusing, withholding from or denying to
9 any individual of the opposite sex any of the accommodations,
10 advantages, facilities or privileges thereof on the basis of sex; provided
11 further, that the foregoing limitation shall not apply to any restaurant
12 as defined in R.S.33:1-1 or place where alcoholic beverages are
13 served.

14 g. For the owner, lessee, sublessee, assignee or managing agent of,
15 or other person having the right of ownership or possession of or the
16 right to sell, rent, lease, assign, or sublease any real property or part
17 or portion thereof, or any agent or employee of any of these:

18 (1) To refuse to sell, rent, lease, assign, or sublease or otherwise
19 to deny to or withhold from any person or group of persons any real
20 property or part or portion thereof because of the race, creed, color,
21 national origin, ancestry, marital status, affectional or sexual
22 orientation, familial status or nationality of such person or group of
23 persons;

24 (2) To discriminate against any person or group of persons because
25 of the race, creed, color, national origin, marital status, sex, affectional
26 or sexual orientation or familial status of such person or group of
27 persons in the terms, conditions or privileges of the sale, rental or
28 lease of any real property or part or portion thereof or in the
29 furnishing of facilities or services in connection therewith; or

30 (3) To print, publish, circulate, issue, display, post or mail, or
31 cause to be printed, published, circulated, issued, displayed, posted or
32 mailed any statement, advertisement, publication or sign, or to use any
33 form of application for the purchase, rental, lease, assignment or
34 sublease of any real property or part or portion thereof, or to make
35 any record or inquiry in connection with the prospective purchase,
36 rental, lease, assignment, or sublease of any real property, or part or
37 portion thereof which expresses, directly or indirectly, any limitation,
38 specification or discrimination as to race, creed, color, national origin,
39 ancestry, marital status, sex, affectional or sexual orientation, familial
40 status or nationality, or any intent to make any such limitation,
41 specification or discrimination, and the production of any such
42 statement, advertisement, publicity, sign, form of application, record,
43 or inquiry purporting to be made by any such person shall be
44 presumptive evidence in any action that the same was authorized by
45 such person; provided, however, that nothing contained in this
46 subsection shall be construed to bar any person from refusing to sell,

1 rent, lease, assign or sublease or from advertising or recording a
2 qualification as to sex for any room, apartment, flat in a dwelling or
3 residential facility which is planned exclusively for and occupied by
4 individuals of one sex to any individual of the exclusively opposite sex
5 on the basis of sex.

6 h. For any person, including but not limited to, any real estate
7 broker, real estate salesperson, or employee or agent thereof:

8 (1) To refuse to sell, rent, assign, lease or sublease, or offer for
9 sale, rental, lease, assignment, or sublease any real property or part or
10 portion thereof to any person or group of persons or to refuse to
11 negotiate for the sale, rental, lease, assignment, or sublease of any real
12 property or part or portion thereof to any person or group of persons
13 because of the race, creed, color, national origin, ancestry, marital
14 status, familial status, sex, affectional or sexual orientation or
15 nationality of such person or group of persons, or to represent that any
16 real property or portion thereof is not available for inspection, sale,
17 rental, lease, assignment, or sublease when in fact it is so available, or
18 otherwise to deny or withhold any real property or any part or portion
19 of facilities thereof to or from any person or group of persons because
20 of the race, creed, color, national origin, ancestry, marital status,
21 familial status, sex, affectional or sexual orientation or nationality of
22 such person or group of persons;

23 (2) To discriminate against any person because of his race, creed,
24 color, national origin, ancestry, marital status, familial status, sex or
25 affectional or sexual orientation in the terms, conditions or privileges
26 of the sale, rental, lease, assignment or sublease of any real property
27 or part or portion thereof or in the furnishing of facilities or services
28 in connection therewith; or

29 (3) To print, publish, circulate, issue, display, post, or mail, or
30 cause to be printed, published, circulated, issued, displayed, posted or
31 mailed any statement, advertisement, publication or sign, or to use any
32 form of application for the purchase, rental, lease, assignment, or
33 sublease of any real property or part or portion thereof or to make any
34 record or inquiry in connection with the prospective purchase, rental,
35 lease, assignment, or sublease of any real property or part or portion
36 thereof which expresses, directly or indirectly, any limitation,
37 specification or discrimination as to race, creed, color, national origin,
38 ancestry, marital status, familial status, sex, affectional or sexual
39 orientation or nationality or any intent to make any such limitation,
40 specification or discrimination, and the production of any such
41 statement, advertisement, publicity, sign, form of application, record,
42 or inquiry purporting to be made by any such person shall be
43 presumptive evidence in any action that the same was authorized by
44 such person; provided, however, that nothing contained in this
45 subsection h., shall be construed to bar any person from refusing to
46 sell, rent, lease, assign or sublease or from advertising or recording a

1 qualification as to sex for any room, apartment, flat in a dwelling or
2 residential facility which is planned exclusively for and occupied
3 exclusively by individuals of one sex to any individual of the opposite
4 sex on the basis of sex.

5 i. For any person, bank, banking organization, mortgage company,
6 insurance company or other financial institution, lender or credit
7 institution to whom application is made for any loan or extension of
8 credit including but not limited to an application for financial
9 assistance for the purchase, acquisition, construction, rehabilitation,
10 repair or maintenance of any real property or part or portion thereof
11 or any agent or employee thereof:

12 (1) To discriminate against any person or group of persons because
13 of the race, creed, color, national origin, ancestry, marital status, sex,
14 affectional or sexual orientation or nationality of such person or group
15 of persons or of the prospective occupants or tenants of such real
16 property or part or portion thereof, in the granting, withholding,
17 extending, modifying or renewing, or in the fixing of the rates, terms,
18 conditions or provisions of any such loan, extension of credit or
19 financial assistance or in the extension of services in connection
20 therewith; or

21 (2) To use any form of application for such loan, extension of
22 credit or financial assistance or to make record or inquiry in
23 connection with applications for any such loan, extension of credit or
24 financial assistance which expresses, directly or indirectly, any
25 limitation, specification or discrimination as to race, creed, color,
26 national origin, ancestry, marital status, sex, affectional or sexual
27 orientation or nationality or any intent to make any such limitation,
28 specification or discrimination; unless otherwise required by law or
29 regulation to retain or use such information; or

30 (3) To discriminate on the basis of familial status in any manner
31 described in paragraph (1) or (2) of this subsection with respect to any
32 real property.

33 j. For any person whose activities are included within the scope of
34 this act to refuse to post or display such notices concerning the rights
35 or responsibilities of persons affected by this act as the Attorney
36 General may by regulation require.

37 k. For any real estate broker, real estate salesperson or employee
38 or agent thereof or any other individual, corporation, partnership, or
39 organization, for the purpose of inducing a transaction for the sale or
40 rental of real property from which transaction such person or any of
41 its members may benefit financially, to represent that a change has
42 occurred or will or may occur in the composition with respect to race,
43 creed, color, national origin, ancestry, marital status, familial status,
44 sex, affectional or sexual orientation or nationality of the owners or
45 occupants in the block, neighborhood or area in which the real
46 property is located, and to represent, directly or indirectly, that this

1 change will or may result in undesirable consequences in the block,
2 neighborhood or area in which the real property is located, including,
3 but not limited to the lowering of property values, an increase in
4 criminal or anti-social behavior, or a decline in the quality of schools
5 or other facilities.

6 1. For any person to refuse to buy from, sell to, lease from or to,
7 license, contract with, or trade with, provide goods, services or
8 information to, or otherwise do business with any other person on the
9 basis of the race, creed, color, national origin, ancestry, age, sex,
10 affectional or sexual orientation, marital status, liability for service in
11 the Armed Forces of the United States, or nationality of such other
12 person or of such other person's spouse, partners, members,
13 stockholders, directors, officers, managers, superintendents, agents,
14 employees, business associates, suppliers, or customers. This
15 subsection shall not prohibit refusals or other actions (1) pertaining to
16 employee-employer collective bargaining, labor disputes, or unfair
17 labor practices, or (2) made or taken in connection with a protest of
18 unlawful discrimination or unlawful employment practices.

19 m. For any person to:

20 (1) Grant or accept any letter of credit or other document which
21 evidences the transfer of funds or credit, or enter into any contract for
22 the exchange of goods or services, where the letter of credit, contract,
23 or other document contains any provisions requiring any person to
24 discriminate against or to certify that he, she or it has not dealt with
25 any other person on the basis of the race, creed, color, national origin,
26 ancestry, age, sex, affectional or sexual orientation, marital status,
27 liability for service in the Armed Forces of the United States, or
28 nationality of such other person or of such other person's spouse,
29 partners, members, stockholders, directors, officers, managers,
30 superintendents, agents, employees, business associates, suppliers, or
31 customers.

32 (2) Refuse to grant or accept any letter of credit or other document
33 which evidences the transfer of funds or credit, or refuse to enter into
34 any contract for the exchange of goods or services, on the ground that
35 it does not contain such a discriminatory provision or certification.

36 The provisions of this subsection shall not apply to any letter of
37 credit, contract, or other document which contains any provision
38 pertaining to employee-employer collective bargaining, a labor dispute
39 or an unfair labor practice, or made in connection with the protest of
40 unlawful discrimination or an unlawful employment practice, if the
41 other provisions of such letter of credit, contract, or other document
42 do not otherwise violate the provisions of this subsection.

43 n. For any person to aid, abet, incite, compel, coerce, or induce the
44 doing of any act forbidden by subsections l. and m. of section 11 of
45 P.L.1945, c.169 (C.10:5-12), or to attempt, or to conspire to do so.
46 Such prohibited conduct shall include, but not be limited to:

1 (1) Buying from, selling to, leasing from or to, licensing,
2 contracting with, trading with, providing goods, services, or
3 information to, or otherwise doing business with any person because
4 that person does, or agrees or attempts to do, any such act or any act
5 prohibited by this subsection n.; or

6 (2) Boycotting, commercially blacklisting or refusing to buy from,
7 sell to, lease from or to, license, contract with, provide goods, services
8 or information to, or otherwise do business with any person because
9 that person has not done or refuses to do any such act or any act
10 prohibited by this subsection n.; provided that this subsection n. shall
11 not prohibit refusals or other actions either pertaining to
12 employee-employer collective bargaining, labor disputes, or unfair
13 labor practices, or made or taken in connection with a protest of
14 unlawful discrimination or unlawful employment practices.

15 (cf: P.L.1992, c.146, s.9)

16

17 5. (New section) No person shall obtain genetic information from
18 an individual, or from an individual's DNA sample, without first
19 obtaining informed consent from the individual or the individual's
20 representative, except:

21 a. A State, county, municipal or federal law enforcement agency
22 for the purposes of establishing the identity of a person in the course
23 of a criminal investigation or prosecution;

24 b. To determine paternity in accordance with the provisions of
25 section 14 of P.L.1983, c.17 (C.9:17-51);

26 c. Pursuant to the provisions of the "DNA Database and Databank
27 Act of 1994," P.L.1994, c.136 (C.53:1-20.17 et seq.);

28 d. To determine the identity of deceased individuals;

29 e. For anonymous research where the identity of the subject will
30 not be released; or

31 f. As authorized by federal law for the identification of persons.

32

33 6. (New section) a. An individual's genetic information is the
34 property of the individual.

35 b. No person shall retain an individual's genetic information
36 without first obtaining specific authorization from the individual or the
37 individual's representative, unless:

38 (1) Retention is necessary for the purposes of a criminal or death
39 investigation or a criminal or juvenile proceeding;

40 (2) Retention is necessary to determine paternity in accordance
41 with the provisions of section 14 of P.L.1983, c.17 (C.9:17-51);

42 (3) Retention is authorized by order of a court of competent
43 jurisdiction; or

44 (4) Retention is made pursuant to the provisions of the "DNA
45 Database and Databank Act of 1994," P.L.1994, c.136 (C.53:1-20.17
46 et seq.).

1 c. The DNA sample of an individual from which genetic
2 information has been obtained shall be destroyed promptly upon the
3 specific request of that individual or the individual's representative,
4 unless:

5 (1) Retention is necessary for the purposes of a criminal or death
6 investigation or a criminal or juvenile proceeding; or

7 (2) Retention is authorized by order of a court of competent
8 jurisdiction.

9 d. A DNA sample from an individual who is the subject of a
10 research project shall be destroyed promptly upon completion of the
11 project or withdrawal of the individual from the project, whichever
12 occurs first, unless the individual or the individual's representative
13 directs otherwise by informed consent.

14 e. A DNA sample from an individual for insurance or employment
15 purposes shall be destroyed promptly after the purpose for which the
16 sample was obtained has been accomplished unless retention is
17 authorized by order of a court of competent jurisdiction.

18 f. An individual or an individual's representative, promptly upon
19 request, may inspect, request correction of and obtain genetic
20 information from the records of the individual.

21 g. This section applies only to genetic information that can be
22 identified as belonging to an individual or family. This section does
23 not apply to any law, contract or other arrangement that determines a
24 person's rights to compensation relating to substances or information
25 derived from an individual's DNA sample.

26

27 7. (New section) a. Regardless of the manner of receipt or the
28 source of genetic information, including information received from an
29 individual, a person may not disclose or be compelled, by subpoena or
30 any other means, to disclose the identity of an individual upon whom
31 a genetic test has been performed or to disclose genetic information
32 about the individual in a manner that permits identification of the
33 individual, unless:

34 (1) Disclosure is necessary for the purposes of a criminal or death
35 investigation or a criminal or juvenile proceeding;

36 (2) Disclosure is necessary to determine paternity in accordance
37 with the provisions of section 14 of P.L.1983, c.17 (C.9:17-51);

38 (3) Disclosure is authorized by order of a court of competent
39 jurisdiction;

40 (4) Disclosure is made pursuant to the provisions of the "DNA
41 Database and Databank Act of 1994," P.L.1994, c.136 (C.53:1-20.17
42 et seq.);

43 (5) Disclosure is authorized by the tested individual or the tested
44 individual's representative by signing a consent which complies with
45 the requirements of the Department of Health;

46 (6) Disclosure is for the purpose of furnishing genetic information

1 relating to a decedent for medical diagnosis of blood relatives of the
2 decedent;

3 (7) Disclosure is for the purpose of identifying bodies; or

4 (8) Disclosure is authorized by federal law for the identification of
5 persons.

6 b. The provisions of this section apply to any redisclosure by any
7 person after another person has disclosed genetic information or the
8 identity of an individual upon whom a genetic test has been performed.

9

10 8. (New Section) a. A person that performs genetic testing or
11 receives records, results or findings of genetic testing shall provide the
12 person tested with notice that the test was performed or that the
13 information was received. The notice shall state that the information
14 may not be disclosed to any person without the written consent of the
15 person tested, unless disclosure is made pursuant to one of the
16 exceptions provided for in section 7 of this 1996 amendatory and
17 supplementary act.

18 b. The Commissioner of Health shall promulgate regulations
19 pursuant to the provisions of the "Administrative Procedure Act,"
20 P.L.1968, c.410 (C.52:14B-1 et seq.) governing procedures for
21 obtaining informed consent pursuant to this act.

22

23 9. (New section) Any person violating the provisions of this 1996
24 amendatory and supplementary act shall be a disorderly person and
25 shall be punished by a fine of \$1,000, a prison term of six months, or
26 both.

27

28 10. This act shall take effect immediately.

29

30

31

STATEMENT

32

33 This bill, the "Genetic Privacy Act," provides a comprehensive
34 statutory framework for the regulation of genetic testing and the
35 retention and disclosure of information obtained from genetic tests.
36 The bill provides protection from unauthorized genetic testing, the
37 unauthorized use of genetic information, and from discrimination
38 against individuals on the basis of genetic information.

39 The bill amends New Jersey's "Law Against Discrimination" to
40 make it an unlawful employment practice for an employer to refuse to
41 hire or refuse to employ a person or to discharge or require a person
42 to retire on the basis of genetic information or because of the refusal
43 to submit to a genetic test. However, the bill allows employers to
44 require employees or prospective employees to submit to a genetic test
45 to determine a bona fide occupational qualification.

46 The bill prohibits life and health insurers from discriminating against

1 any person on the basis of genetic information in the issuance,
2 withholding, extension or renewal of any life or health insurance policy
3 or annuity, or in the fixing of rates, terms or conditions of a life or
4 health insurance policy, or in the issuance or acceptance of any life or
5 health insurance application.

6 The bill provides standards and procedures for obtaining, retaining
7 and disclosing genetic information. The bill prohibits any person from
8 obtaining genetic information from an individual, or from an
9 individual's DNA sample without first obtaining informed consent from
10 the individual or the individual's representative, except under certain
11 limited circumstances set forth in the bill.

12 The bill declares that an individual's genetic information is the
13 property of that individual, and prohibits any person from retaining an
14 individual's genetic information without first obtaining specific
15 authorization from the individual or the individual's representative,
16 except under certain limited circumstances set forth in the bill. The
17 bill requires that the DNA sample of an individual from which genetic
18 information has been obtained shall be destroyed promptly upon the
19 specific request of the individual, except under certain circumstances
20 and for certain purposes set forth in the bill.

21 The bill also provides that no person may disclose or be compelled
22 to disclose the identity of an individual upon whom a genetic test has
23 been performed or to disclose genetic information about the individual
24 in a manner that permits identification of the individual, except under
25 certain circumstances set forth in the bill.

26 The bill requires any person who performs genetic testing or
27 receives genetic testing records to provide the person tested with
28 notice that the test was performed or that the information was
29 received.

30 The bill also provides that any person violating its provisions shall
31 be a disorderly person and shall be punished by a fine of \$1,000, a
32 prison term of six months, or both.

33

34

35

36

37 The "Genetic Privacy Act."