

Bill No. 31-00
Concerning: Human Relations and Civil Liberties – Genetic Discrimination in Employment
Revised: Dec. 12, 2000 Draft No. 7
Introduced: October 17, 2000
Enacted: December 12, 2000
Executive: December 20, 2000
Effective: March 21, 2001
Sunset Date: None
Ch. 36, Laws of Mont. Co. 2000

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmember Andrews, Council President Subin, and Councilmembers Leggett, Praisner Ewing, and Berlage

AN ACT to:

- (1) prohibit employment discrimination based on genetic status;
- (2) generally amend County law regarding the use of genetic information; and
- (3) make stylistic and technical changes in County law regarding human relations and civil liberties.

By amending

Montgomery County Code
Chapter 27, Human Relations and Civil Liberties
Sections 27-1, 27-6, 27-17, 27-18, and 27-19.

By adding to the Laws of Montgomery County

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act

1 **Sec. 1. Short title.**

2 This Act may be cited as the Genetic Information Employment Rights Act of
 3 2000.

4 **Sec. 2. Findings.**

5 The County Council finds that:

- 6 (a) Genetic status can be used as a proxy for otherwise illegal grounds for
 7 discrimination, such as discrimination based on religion, race,
 8 nationality, sex, or age, providing a loophole in employment protections
 9 previously guaranteed by County law.
- 10 (b) The threat of discrimination in employment based on the actual or
 11 perceived genetic status of an employee (including an applicant for
 12 employment) discourages genetic testing that could prevent or reduce
 13 disease or disabilities, provide peace of mind for individuals at risk for
 14 certain genetic conditions, and improve medical knowledge through
 15 genetic research.
- 16 (c) Montgomery County, as home to the Human Genome Project of the
 17 National Institutes of Health, the Food and Drug Administration, Celera
 18 Genomics, and other public and private institutions at the cutting edge
 19 of genetic research, is an international center for the discovery of
 20 genetic knowledge to improve public health and welfare that depends
 21 on clinical research volunteers who live and work in the County.
- 22 (d) Other than an Executive Order protecting federal employees, federal,
 23 state, and local employment laws generally have not kept pace with
 24 recent, rapid advances in genetic testing and therapies.

25 **Sec. 3. Sections 27-1, 27-6, 27-17, 27-18, and 27-19 are amended as**
 26 **follows:**

27 **27-1. Statement of policy.**

28 (a) It is the public policy of Montgomery County:

29 (1) To eliminate discrimination, prejudice, intolerance, and bigotry
 30 that exists as described in this article:

31 [a.]

32 (A) On account of race, color, sex, religious creed, ancestry,
 33 national origin, handicap, marital status, or sexual
 34 orientation in housing, employment, and public
 35 accommodations;

36 [b.]

37 (B) On account of age or genetic status in employment;

38 [c.]

39 (C) On account of the presence of children in housing; and

40 (2) That the discrimination, described in paragraph (1):

41 [a.]

42 (A) Is injurious to and threatens the health, safety, and welfare
 43 of persons in this county;

44 [b.]

45 (B) Is contrary to the purposes of a free, democratic society;

46 [c.]

47 (C) Is illegal and should be abolished; and

48 (3) That the prejudice, intolerance, and bigotry, described in
 49 paragraph (1) only refers to persons who do not treat individuals
 50 with the basic respect that the individuals deserve as human
 51 beings.

- 52 (b) It is not the public policy of Montgomery County:
- 53 (1) To advocate, encourage, promote, or endorse any particular race,
- 54 color, sex, religious creed, ancestry, national origin, marital
- 55 status, age, [or] sexual orientation including homosexuality, or
- 56 **genetic status**; or
- 57 (2) To promote the absence or presence of children in housing; or
- 58 (3) To eliminate the legitimate rights of citizens to safeguard their
- 59 communities and work places from public conduct that is
- 60 contrary to accepted community standards of public decency.

* * *

62 **27-6. Duties generally.**

- 63 (a) The commission on human relations [shall have the power and it shall
- 64 be its duty] must:
- 65 (1) [To research, assemble] Research, analyze, and disseminate
- 66 [pertinent data and educational materials relating to] information
- 67 about activities and programs [which will assist in the elimination
- 68 of] to eliminate prejudice, intolerance, bigotry, and discrimination
- 69 and [to institute and] conduct educational and other programs [,
- 70 meetings and conferences] to promote equal rights and
- 71 opportunities of all persons regardless of [their] race, color,
- 72 religious creed, ancestry, national origin, sex, age, marital status,
- 73 handicap, [or] sexual orientation, or genetic status and to
- 74 promote goodwill, cooperation, understanding, and human
- 75 relations among all persons. [In performance of its duties, the]
- 76 The commission [shall] must cooperate with interested
- 77 citizens[,]; racial, religious, and ethnic groups[,]; and community,

- 78 business, professional, technical, educational, and civic
 79 organizations.
- 80 (2) [To cooperate] Cooperate with the county executive[;] and all
 81 governmental agencies [concerned with] on matters within [their
 82 jurisdictions] the commission's jurisdiction.
- 83 (3) [To study] Study and investigate [by means of], through public or
 84 private meetings, conferences, and public hearings, conditions
 85 [which may] that could result in discrimination, prejudice,
 86 intolerance, [and] or bigotry because of race, color, religious
 87 creed, ancestry, national origin, sex, age, marital status, handicap,
 88 [or] sexual orientation, or genetic status.
- 89 (4) [To advise and counsel the] Advise county residents [of the
 90 county], the county council, the county executive, and the various
 91 departments of county, state, and federal governments [on
 92 matters involving] about racial, religious, [or] and ethnic
 93 prejudice, intolerance, discrimination, and bigotry and [[to]]
 94 recommend [such] procedures, [program or legislation as it may
 95 deem necessary and proper] programs, and laws to promote and
 96 [insure] protect equal rights and opportunities for all persons,
 97 regardless of [their] race, color, religious creed, ancestry, national
 98 origin, sex, age, marital status, handicap, [or] sexual orientation,
 99 or genetic status.
- 100 (5) [To work] Work to [remove inequalities due to] eliminate
 101 discrimination, prejudice, intolerance, and bigotry [on such
 102 problems as] in housing, recreation, education, health,
 103 employment, public accommodations, justice, and related
 104 matters.

- 105 (6) [To initiate] Initiate or receive complaints of discrimination,
 106 prejudice, intolerance, and bigotry from any person or group
 107 because of race, color, sex, age, marital status, religious creed,
 108 ancestry, national origin, handicap, [or] sexual orientation
 109 [which], or genetic status that deprives that person or group of
 110 equal rights, protection, or [opportunities] opportunity. [To] The
 111 commission must investigate [complaints], seek conciliation [of
 112 such complaints and, if warranted, to], hold hearings, and make
 113 recommendations [on such complaints] as necessary to resolve a
 114 complaint.
- 115 (7) [To adopt such] Issue regulations under method (2) [of section
 116 2A-15 of this Code as may be] necessary to carry out [the
 117 purposes and provisions of] this article; [to] and keep a record of
 118 [its] the commission's hearings[;] and activities and minutes of
 119 all other meetings. [The records and minutes shall be on file with
 120 the executive director of the commission and open to the public at
 121 reasonable business hours upon request.] The Commission is a
 122 public body under the State Public Information Act and Open
 123 Meetings Act.
- 124 (8) [To render at the request of the executive or within thirty (30)
 125 days following each quarter of the calendar year preliminary]
 126 Provide to the county executive and county council:
- 127 (A) a quarterly written or oral [reports] report of [its]
 128 commission activities and recommendations [to the county
 129 executive and the county council] within 30 days after
 130 each calendar quarter; and [a final]

157 orientation, or genetic status and strictly [in accord with] according to their
 158 individual merits as human beings.

159 **27-18. Definitions.**

160 [As used] In this division, the following words and phrases [shall be defined as
 161 follows] have the following meanings:

- 162 (a) **Person** includes one [(1)] or more individuals, corporations,
 163 partnerships, associations, labor organizations, legal representatives,
 164 mutual companies, joint stock companies, trusts, unincorporated
 165 organizations, trustees, trustees in bankruptcy, receivers and fiduciaries,
 166 and their officers and agents.
- 167 (b) **Employer** includes any person, wherever situated, who employs more
 168 than [six (6)] 6 employees [within] in the county, either for
 169 compensation or on a volunteer basis, or who recruits individuals
 170 [within] in the county to apply for employment [within] in the county or
 171 elsewhere[; the term shall include]. Employer includes Montgomery
 172 County and its instrumentalities and agencies.
- 173 (c) **Employment agency** includes any person regularly undertaking or
 174 attempting, with or without compensation, to procure **employees** for an
 175 **employer** or to procure for employees opportunities to work for an
 176 **employer**.
- 177 (d) **Labor organization** includes any organization, agency, **employee**
 178 representation committee, group, association, or plan in which
 179 **employees** participate directly or indirectly [and which exists for the
 180 purpose, in whole or in part, of] whose purposes include dealing with
 181 **employers** concerning grievances, labor disputes, wages, rates of pay,
 182 hours, or other terms, conditions, or privileges of employment [and].
 183 Labor organization includes any agent [thereof], [and any] conference,

184 general committee, joint or system board, or joint council [which is
 185 subordinate to a national or international labor organization] of these
 186 entities.

187 (e) **Employee** includes any individual employed by an **employer**, either for
 188 compensation or on a volunteer basis, and any person seeking or
 189 applying for employment.

190 (f) **Religious creed** includes all [aspects of] religious beliefs, observances,
 191 and practices[, as well as belief].

192 (g) [The terms "because] **“Because of sex”** or **“on the basis of sex”**
 193 [include] includes, but [are] is not limited to, because of, or on the basis
 194 of:

195 (1) pregnancy[.];

196 (2) childbirth; or

197 (3) [related] medical conditions related to pregnancy or childbirth.

198 (h) **Genetic status**: Discrimination based on genetic status includes
 199 discrimination based on:

200 (1) **genetic information**; or

201 (2) the actual or perceived genetic condition of an employee or the
 202 employee’s relative.

203 (i) **Genetic information** includes information regarding an **employee’s** (or
 204 an employee’s relative’s):

205 (1) actual or perceived genetic condition; [[or]]

206 (2) request for or receipt of any test that can detect, indicate, or
 207 analyze a genetic condition; or

208 (3) [[information about the]] medical history [[of an employee or the
 209 employee’s relative]], if the information otherwise satisfies either
 210 paragraph (1) or (2).

211 (j) **Genetic condition** includes the presence of deoxyribonucleic acid
 212 (DNA), ribonucleic acid (RNA), chromosomes, proteins, or certain
 213 metabolites that indicate or confirm that an individual has a mutation or
 214 other genotype associated with a disease or disability.

215 (k) **Employee’s relative** means any individual who is, or is perceived to be:
 216 (1) biologically related to the employee; or
 217 (2) eligible for health care insurance or other benefit from the
 218 employer because of the individual’s relationship to the
 219 employee.

220 **27-19. Unlawful employment practices.**

221 (a) It shall be an unlawful employment practice to do any of the following
 222 acts because of the race, color, religious creed, ancestry, national origin,
 223 age, sex, marital status, handicap, [or] sexual orientation, or genetic
 224 status of any individual or because of any reason that would not have
 225 been asserted but for the race, color, religious creed, ancestry, national
 226 origin, age, sex, marital status, handicap, [or] sexual orientation, or
 227 genetic status of the individual:

228 (1) For an **employer**:

229 [a.]

230 (A) To fail or refuse to hire or fail to accept the services of or
 231 to discharge any individual, or otherwise to discriminate
 232 against any individual with respect to compensation, terms,
 233 conditions, or privileges of employment.

234 [b.]

235 (B) To limit, segregate, or classify **employees** in any way
 236 [which] that would deprive or tend to affect adversely any

237 individual's employment opportunities or status as an
 238 **employee.**

239 (2) For an **employment agency** to fail or refuse to refer for
 240 employment, to assign job classifications to, or to classify or refer
 241 for employment, or otherwise to discriminate against, any
 242 individual.

243 (3) For a **labor organization:**

244 [a.]

245 (A) To exclude or to expel from its membership, or otherwise
 246 to discriminate against any individual.

247 [b.]

248 (B) To limit, segregate, or classify its membership, or to
 249 classify or fail or refuse to refer for employment any
 250 individual in any way [which] that would deprive or tend
 251 to deprive any individual of equal employment
 252 opportunities, or would affect adversely the individual's
 253 employment opportunities or status as an **employee**[.] or as
 254 an applicant for employment.

255 [c.]

256 (C) To cause or attempt to cause an **employer** to discriminate
 257 against an individual in violation of this section.

258 (4) For any **employer, labor organization,** or joint labor-
 259 management committee controlling apprenticeship or other
 260 training programs to discriminate against any individual in
 261 admission to, or employment in, any program established to
 262 provide apprenticeship or other training.

263 (b) * * *

- 264 (c) It shall be a violation of this division for any **person, employer, labor**
 265 **organization** or **employment agency** to print or publish or cause to be
 266 printed or published, any notice or advertisement relating to
 267 employment by such **employer**, or membership in or any classification
 268 or referral for employment by such **labor organization**, or relating to
 269 any classification or referral for employment by such **employment**
 270 **agency**, indicating any preference, limitation, or specification based on
 271 race, color, religious creed, ancestry, national origin, age, sex, marital
 272 status, handicap, [or] sexual orientation, or genetic status. [except that
 273 such a] A notice or advertisement may indicate a preference, limitation,
 274 or specification [which] that is a bona fide occupational qualification for
 275 employment reasonably necessary to the normal operation of the
 276 particular business or enterprise.
- 277 (d) Notwithstanding any other provision of this division, it shall not be an
 278 unlawful employment practice:
- 279 (1) For an **employer** to hire and employ **employees**, for an
 280 **employment agency** to classify or refer for employment any
 281 individual, for a **labor organization** to classify its membership or
 282 to classify or refer for employment any individual, or for an
 283 **employer, labor organization** or joint labor-management
 284 committee controlling apprenticeship or other training or
 285 retraining programs, to admit or employ any individual in any
 286 such program, on the basis of race, color, religious creed, age,
 287 sex, marital status, national origin, ancestry, handicap, [or] sexual
 288 orientation [in those certain instances where such], or genetic
 289 status if the basis is a bona fide occupational qualification

290 reasonably necessary to the normal operation of that particular
 291 business or enterprise[;].

292 (2) For a religious corporation, association, or society to hire and
 293 employ **employees** of a particular religion to perform purely
 294 religious functions[; and].

295 (3) For an **employer** to deny employment on the basis of religious
 296 creed [in those cases when] if the observance, practice, or belief
 297 cannot be reasonably accommodated by an **employer** without
 298 causing undue hardship on the conduct of the **employer's**
 299 business.

300 (e) * * *

301 (f) * * *

302 (g) Notwithstanding any other provision of this division, a physician or
 303 other licensed medical professional may use **genetic information** about,
 304 and consider the **genetic status** of, an **employee** to evaluate whether a
 305 disease, medical condition, or disability that is currently manifest
 306 [[prevents]] is preventing the **employee** from performing the essential
 307 functions of the position if:

308 (1) the **genetic information** is provided to the **employee** in writing
 309 as soon as the **information** is available;

310 (2) the **genetic information** is not disclosed to any other person
 311 (including the **employer**) without the **employee's** voluntary,
 312 written consent;

313 (3) the **genetic information** is maintained as a medical record
 314 separate from the **employee's** employment records; and

315 (4) no other law prohibits:

- 316 (A) the medical professional from collecting or using the
- 317 genetic information, or
- 318 (B) the employer from considering the disease or disability, or
- 319 the employee's genetic status.

320 (h) This division does not prohibit genetic monitoring of biological effects
 321 of toxic substances in the workplace if:

- 322 (1) the employee has provided prior voluntary, informed consent in
 323 writing to participate in the monitoring;
- 324 (2) the employee receives the results of the monitoring, including
 325 both aggregate information and any information regarding the
 326 specific employee, as soon as results are available;
- 327 (3) the monitoring complies with all other laws, such as regulations
 328 protecting human subjects in research; and
- 329 (4) the employer (other than a licensed medical professional
 330 involved in the genetic monitoring) receives results of the
 331 monitoring only in aggregate terms that do not disclose the
 332 identity of any specific employee.

333 (i) An employer must not require an employee to obtain or reveal any
 334 genetic information that the employer is prohibited from considering
 335 under this division.

336 **Sec. 4. Regulations.**

337 All County regulations in effect when this Act becomes law continue in effect,
 338 except that any reference in a regulation to employment discrimination includes
 339 discrimination based on genetic status, as provided in this Act. Within 120 days after
 340 this Act becomes law, the County Executive and the Human Relations Commission
 341 must submit to the Council, for approval under method (2), any amendments to their
 342 respective regulations necessary to implement this Act.

343 **Sec. 5. Public Education Program.**

344 The Human Relations Commission must, within 90 days after this Act
 345 becomes law, propose to the County Council and County Executive a public
 346 education program to inform employers, employees, genetic research and testing
 347 organizations, and the general public about County law regarding employment
 348 discrimination based on genetic information. In developing the proposed program,
 349 the Commission should consider the advice of employee and employer groups,
 350 genetics researchers, human rights organizations, and other interested individuals and
 351 organizations. This Section does not limit any authority or duty of the Commission
 352 under Chapter 27 of the County Code.

353 *Approved:*

354	/S/	12/13/00
	Blair G. Ewing, President, County Council	Date

355 *Approved:*

356	/S/	12/20/00
	Douglas M. Duncan, County Executive	Date

357 *This is a correct copy of Council action.*

358	/S/	12/20/00
	Mary A. Edgar, CMC, Clerk of the Council	Date