

17B:30-12

LEGISLATIVE HISTORY CHECKLIST
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(Genetic testing)

NJSA: 17B:30-12

LAWS OF: 1996 CHAPTER: 126

BILL NO: S695

SPONSOR(S): Sinagra and Matheussen

DATE INTRODUCED: February 15, 1996

ASSEMBLY: ---

SENATE: Health

AMENDED DURING PASSAGE: Yes S695/854 SCS enacted

DATE OF PASSAGE: ASSEMBLY: June 17, 1996

SENATE: June 13, 1996

DATE OF APPROVAL: November 19, 1996

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: No

SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: Yes

MESSAGE ON SIGNING: Yes

FOLLOWING WERE PRINTED:
REPORTS: No

HEARINGS: No

KBP:pp

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[First Reprint]

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 695 and 854

STATE OF NEW JERSEY

ADOPTED MARCH 14, 1996

Sponsored by Senators SINAGRA, MATHEUSSEN, BENNETT,
Scott, Kosco, Bassano, Bubba, Assemblywoman Heck,
Assemblymen Doria and DiGaetano

1 AN ACT concerning genetic testing and privacy and medical
2 underwriting, amending N.J.S.17B:30-12, amending and
3 supplementing P.L.1945, c.169 and supplementing Titles 17 and 26
4 of the Revised Statutes and Title 17B of the New Jersey Statutes.

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

8
9 1. Sections 1 through 10 of this act shall be known and may be
10 cited as the "Genetic Privacy Act."

11
12 2. (New section) The Legislature finds and declares:

13 a. The DNA molecule contains information about an individual's
14 probable medical future. This information is written in a code that is
15 rapidly being broken.

16 b. Genetic information is personal information that should not be
17 collected, retained or disclosed without the individual's authorization.

18 c. The improper collection, retention or disclosure of genetic
19 information can lead to significant harm to the individual, including
20 stigmatization and discrimination in areas such as employment,
21 education, health care and insurance.

22 d. An analysis of an individual's DNA provides information not
23 only about an individual, but also about the individual's parents,
24 siblings and children, thereby impacting family privacy, including
25 reproductive decisions.

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate amendments adopted in accordance with Governor's recommendations October 24, 1996.

1 e. Current legal protections for medical information, tissue
2 samples and DNA samples are inadequate to protect genetic privacy.

3 f. Laws for the collection, storage and use of identifiable DNA
4 samples and private genetic information obtained from those samples
5 are needed both to protect individual privacy and to permit legitimate
6 genetic research.

7 g. Progress in mapping the genes that cause breast cancer and
8 other diseases has far outpaced the development of a legal and ethical
9 context in which genetic information can be properly evaluated.

10 h. Effective tests to determine the presence of genes that cause
11 breast cancer and other diseases carry with them the devastating
12 potential for discrimination against carriers of these genes.

13

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

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

21 b. No person shall use any form of policy of life or health
22 insurance or contract of annuity which expresses, directly or indirectly,
23 any limitation, or discrimination as to race, creed, color, national
24 origin or ancestry or any intent to make any such limitation or
25 discrimination.

26 c. No person shall make or permit any unfair discrimination
27 between individuals of the same class and equal expectation of life in
28 the rates charged for any policy of life insurance or contract of annuity
29 or in the dividends or other benefits payable thereon, or in any other
30 of the terms and conditions of such policy of life insurance or contract
31 of annuity.

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

38 e. (1) No person shall discriminate against any individual on the
39 basis of genetic information or the refusal to submit to a genetic test
40 or make available the results of a genetic test to the person in the
41 issuance, withholding, extension or renewal of any hospital confinement
42 or other supplemental limited benefit ¹ [health or credit life or credit
43 accident] ¹ insurance ¹ [coverage] ¹, as defined by regulation of the
44 commissioner, or in the fixing of the rates, terms or conditions
45 therefor, or in the issuance or acceptance of any application therefor.

46 (2) As used in this subsection and subsection f. of this section:

1 "Genetic characteristic" means any inherited gene or chromosome,
2 or alteration thereof, that is scientifically or medically believed to
3 predispose an individual to a disease, disorder or syndrome, or to be
4 associated with a statistically significant increased risk of development
5 of a disease, disorder or syndrome.

6 "Genetic information" means the information about genes, gene
7 products or inherited characteristics that may derive from an individual
8 or family member.

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

14 f. No person shall make or permit any unfair discrimination against
15 an individual in the application of the results of a genetic test or
16 genetic information in the ¹[underwriting of or determining insurability
17 for] issuance, withholding, extension or renewal of¹ a policy of life
18 insurance, ¹including credit life insurance,¹ an annuity ¹[or],¹
19 disability income insurance contract ¹or credit accident insurance
20 coverage¹. If the commissioner has reason to believe that such unfair
21 discrimination has occurred, including that application of the results
22 of a genetic test is not reasonably related to anticipated claim
23 experience, and that a proceeding by the commissioner would be in the
24 interest of the public, the commissioner shall, in accordance with the
25 provisions of N.J.S.17B:30-1 et seq., issue and serve upon the insurer
26 a statement of the charges. Upon a determination that the practice or
27 act of the insurer is in conflict with the provisions of this subsection,
28 the commissioner shall issue an order requiring the insurer to cease
29 and desist from engaging in the practice or act and may order payment
30 of a penalty consistent with the provisions of N.J.S.17B:30-1 et seq.

31 If, in the issuance, withholding, extension or renewal of any policy
32 of life insurance, ¹including credit life insurance,¹ an annuity ¹[or],¹
33 disability income insurance contract ¹or credit accident insurance
34 coverage¹, an insurer will use the results of a genetic test in
35 compliance with this subsection, the insurer shall notify the individual
36 who is the subject of the genetic test that such a test shall be required
37 and shall obtain the individual's written informed consent for the test
38 prior to the administration of the test, in accordance with the
39 requirements of P.L.1985, c.179 (C.17:23A-1 et seq.). The insurer
40 shall also provide that the physician or other health care professional
41 designated by the individual shall promptly receive a copy of the
42 results of the test and, if required, an interpretation of the test results
43 by a qualified professional, and that the individual shall state in writing
44 whether the individual elects to be informed of the results of the test.

45 g. Nothing contained in this section shall be construed to require
46 any agent or company to take or receive the application for insurance

1 or annuity of any person or to issue a policy of insurance or contract
2 of annuity to any person.

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

4

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

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

9 a. "Person" includes one or more individuals, partnerships,
10 associations, organizations, labor organizations, corporations, legal
11 representatives, trustees, trustees in bankruptcy, receivers, and
12 fiduciaries.

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

15 c. "Labor organization" includes any organization which exists and
16 is constituted for the purpose, in whole or in part, of collective
17 bargaining, or of dealing with employers concerning grievances, terms
18 or conditions of employment, or of other mutual aid or protection in
19 connection with employment.

20 d. "Unlawful employment practice" and "unlawful discrimination"
21 include only those unlawful practices and acts specified in section 11
22 of this act.

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

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

29 g. "Liability for service in the Armed Forces of the United States"
30 means subject to being ordered as an individual or member of an
31 organized unit into active service in the Armed Forces of the United
32 States by reason of membership in the National Guard, naval militia or
33 a reserve component of the Armed Forces of the United States, or
34 subject to being inducted into such armed forces through a system of
35 national selective service.

36 h. "Division" means the "Division on Civil Rights" created by this
37 act.

38 i. "Attorney General" means the Attorney General of the State of
39 New Jersey or his representative or designee.

40 j. "Commission" means the Commission on Civil Rights created by
41 this act.

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

43 l. "A place of public accommodation" shall include, but not be
44 limited to: any tavern, roadhouse, hotel, motel, trailer camp, summer
45 camp, day camp, or resort camp, whether for entertainment of
46 transient guests or accommodation of those seeking health, recreation

1 or rest; any producer, manufacturer, wholesaler, distributor, retail
2 shop, store, establishment, or concession dealing with goods or
3 services of any kind; any restaurant, eating house, or place where food
4 is sold for consumption on the premises; any place maintained for the
5 sale of ice cream, ice and fruit preparations or their derivatives, soda
6 water or confections, or where any beverages of any kind are retailed
7 for consumption on the premises; any garage, any public conveyance
8 operated on land or water, or in the air, any stations and terminals
9 thereof; any bathhouse, boardwalk, or seashore accommodation; any
10 auditorium, meeting place, or hall; any theatre, motion-picture house,
11 music hall, roof garden, skating rink, swimming pool, amusement and
12 recreation park, fair, bowling alley, gymnasium, shooting gallery,
13 billiard and pool parlor, or other place of amusement; any comfort
14 station; any dispensary, clinic or hospital; any public library; any
15 kindergarten, primary and secondary school, trade or business school,
16 high school, academy, college and university, or any educational
17 institution under the supervision of the State Board of Education, or
18 the Commissioner of Education of the State of New Jersey. Nothing
19 herein contained shall be construed to include or to apply to any
20 institution, bona fide club, or place of accommodation, which is in its
21 nature distinctly private; nor shall anything herein contained apply to
22 any educational facility operated or maintained by a bona fide religious
23 or sectarian institution, and the right of a natural parent or one in loco
24 parentis to direct the education and upbringing of a child under his
25 control is hereby affirmed; nor shall anything herein contained be
26 construed to bar any private secondary or post secondary school from
27 using in good faith criteria other than race, creed, color, national
28 origin, ancestry or affectional or sexual orientation in the admission of
29 students.

30 m. "A publicly assisted housing accommodation" shall include all
31 housing built with public funds or public assistance pursuant to
32 P.L.1949, c.300, P.L.1941, c.213, P.L.1944, c.169, P.L.1949, c.303,
33 P.L.1938, c.19, P.L.1938, c.20, P.L.1946, c.52, and P.L.1949, c.184,
34 and all housing financed in whole or in part by a loan, whether or not
35 secured by a mortgage, the repayment of which is guaranteed or
36 insured by the federal government or any agency thereof.

37 n. The term "real property" includes real estate, lands, tenements
38 and hereditaments, corporeal and incorporeal, and leaseholds,
39 provided, however, that, except as to publicly assisted housing
40 accommodations, the provisions of this act shall not apply to the
41 rental: (1) of a single apartment or flat in a two-family dwelling, the
42 other occupancy unit of which is occupied by the owner as a residence
43 or the household of the owner's family at the time of such rental; or (2)
44 of a room or rooms to another person or persons by the owner or
45 occupant of a one-family dwelling occupied by the owner or occupant
46 as a residence or the household of the owner's or occupant's family at

1 the time of such rental. Nothing herein contained shall be construed
2 to bar any religious or denominational institution or organization, or
3 any organization operated for charitable or educational purposes,
4 which is operated, supervised or controlled by or in connection with
5 a religious organization, in the sale, lease or rental of real property,
6 from limiting admission to or giving preference to persons of the same
7 religion or denomination or from making such selection as is
8 calculated by such organization to promote the religious principles for
9 which it is established or maintained. Nor does any provision under
10 this act regarding discrimination on the basis of familial status apply
11 with respect to housing for older persons.

12 o. "Real estate broker" includes a person, firm or corporation
13 who, for a fee, commission or other valuable consideration, or by
14 reason of promise or reasonable expectation thereof, lists for sale,
15 sells, exchanges, buys or rents, or offers or attempts to negotiate a
16 sale, exchange, purchase, or rental of real estate or an interest therein,
17 or collects or offers or attempts to collect rent for the use of real
18 estate, or solicits for prospective purchasers or assists or directs in the
19 procuring of prospects or the negotiation or closing of any transaction
20 which does or is contemplated to result in the sale, exchange, leasing,
21 renting or auctioning of any real estate, or negotiates, or offers or
22 attempts or agrees to negotiate a loan secured or to be secured by
23 mortgage or other encumbrance upon or transfer of any real estate for
24 others; or any person who, for pecuniary gain or expectation of
25 pecuniary gain conducts a public or private competitive sale of lands
26 or any interest in lands. In the sale of lots, the term "real estate
27 broker" shall also include any person, partnership, association or
28 corporation employed by or on behalf of the owner or owners of lots
29 or other parcels of real estate, at a stated salary, or upon a
30 commission, or upon a salary and commission or otherwise, to sell
31 such real estate, or any parts thereof, in lots or other parcels, and who
32 shall sell or exchange, or offer or attempt or agree to negotiate the
33 sale or exchange, of any such lot or parcel of real estate.

34 p. "Real estate salesperson" includes any person who, for
35 compensation, valuable consideration or commission, or other thing of
36 value, or by reason of a promise or reasonable expectation thereof, is
37 employed by and operates under the supervision of a licensed real
38 estate broker to sell or offer to sell, buy or offer to buy or negotiate
39 the purchase, sale or exchange of real estate, or offers or attempts to
40 negotiate a loan secured or to be secured by a mortgage or other
41 encumbrance upon or transfer of real estate, or to lease or rent, or
42 offer to lease or rent any real estate for others, or to collect rents for
43 the use of real estate, or to solicit for prospective purchasers or lessees
44 of real estate, or who is employed by a licensed real estate broker to
45 sell or offer to sell lots or other parcels of real estate, at a stated
46 salary, or upon a commission, or upon a salary and commission, or

1 otherwise to sell real estate, or any parts thereof, in lots or other
2 parcels.

3 q. "Handicapped" means suffering from physical disability,
4 infirmity, malformation or disfigurement which is caused by bodily
5 injury, birth defect or illness including epilepsy, and which shall
6 include, but not be limited to, any degree of paralysis, amputation, lack
7 of physical coordination, blindness or visual impediment, deafness or
8 hearing impediment, muteness or speech impediment or physical
9 reliance on a service or guide dog, wheelchair, or other remedial
10 appliance or device, or from any mental, psychological or
11 developmental disability resulting from anatomical, psychological,
12 physiological or neurological conditions which prevents the normal
13 exercise of any bodily or mental functions or is demonstrable,
14 medically or psychologically, by accepted clinical or laboratory
15 diagnostic techniques. Handicapped shall also mean suffering from
16 AIDS or HIV infection.

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

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

29 t. "Guide or service dog trainer" means any person who is
30 employed by an organization generally recognized by agencies
31 involved in the rehabilitation of the blind, handicapped or deaf as
32 reputable and competent to provide dogs with training, and who is
33 actually involved in the training process.

34 u. "Housing accommodation" means any publicly assisted housing
35 accommodation or any real property, or portion thereof, which is used
36 or occupied, or is intended, arranged, or designed to be used or
37 occupied, as the home, residence or sleeping place of one or more
38 persons, but shall not include any single family residence the occupants
39 of which rent, lease, or furnish for compensation not more than one
40 room therein.

41 v. "Public facility" means any place of public accommodation and
42 any street, highway, sidewalk, walkway, public building, and any other
43 place or structure to which the general public is regularly, normally or
44 customarily permitted or invited.

45 w. "Deaf person" means any person whose hearing is so severely
46 impaired that the person is unable to hear and understand normal

1 conversational speech through the unaided ear alone, and who must
2 depend primarily on supportive device or visual communication such
3 as writing, lip reading, sign language, and gestures.

4 x. "Atypical hereditary cellular or blood trait" means sickle cell
5 trait, hemoglobin C trait, thalassemia trait, Tay-Sachs trait, or cystic
6 fibrosis trait.

7 y. "Sickle cell trait" means the condition wherein the major natural
8 hemoglobin components present in the blood of the individual are
9 hemoglobin A (normal) and hemoglobin S (sickle hemoglobin) as
10 defined by standard chemical and physical analytic techniques,
11 including electrophoresis; and the proportion of hemoglobin A is
12 greater than the proportion of hemoglobin S or one natural parent of
13 the individual is shown to have only normal hemoglobin components
14 (hemoglobin A, hemoglobin A2, hemoglobin F) in the normal
15 proportions by standard chemical and physical analytic tests.

16 z. "Hemoglobin C trait" means the condition wherein the major
17 natural hemoglobin components present in the blood of the individual
18 are hemoglobin A (normal) and hemoglobin C as defined by standard
19 chemical and physical analytic techniques, including electrophoresis;
20 and the proportion of hemoglobin A is greater than the proportion of
21 hemoglobin C or one natural parent of the individual is shown to have
22 only normal hemoglobin components (hemoglobin A, hemoglobin A2,
23 hemoglobin F) in normal proportions by standard chemical and
24 physical analytic tests.

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

28 bb. "Tay-Sachs trait" means the presence of the Tay-Sachs gene
29 which in combination with another similar gene results in the chronic
30 hereditary disease Tay-Sachs.

31 cc. "Cystic fibrosis trait" means the presence of the cystic fibrosis
32 gene which in combination with another similar gene results in the
33 chronic hereditary disease cystic fibrosis.

34 dd. "Service dog" means any dog individually trained to a
35 handicapped person's requirements including, but not limited to
36 minimal protection work, rescue work, pulling a wheelchair or
37 retrieving dropped items.

38 ee. "Qualified Medicaid applicant" means an individual who is a
39 qualified applicant pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.).

40 ff. "AIDS" means acquired immune deficiency syndrome as
41 defined by the Centers for Disease Control of the United States Public
42 Health Service.

43 gg. "HIV infection" means infection with the human
44 immunodeficiency virus or any other related virus identified as a
45 probable causative agent of AIDS.

46 hh. "Affectional or sexual orientation" means male or female

1 heterosexual, homosexuality or bisexuality by inclination, practice,
2 identity or expression, having a history thereof or being perceived,
3 presumed or identified by others as having such an orientation.

4 ii. "Heterosexuality" means affectional, emotional or physical
5 attraction or behavior which is primarily directed towards persons of
6 the other gender.

7 jj. "Homosexuality" means affectional, emotional or physical
8 attraction or behavior which is primarily directed towards persons of
9 the same gender.

10 kk. "Bisexuality" means affectional, emotional or physical
11 attraction or behavior which is directed towards persons of either
12 gender.

13 ll. "Familial status" means being the natural parent of a child, the
14 adoptive parent of a child, the foster parent of a child, having a "parent
15 and child relationship" with a child as defined by State law, or having
16 sole or joint legal or physical custody, care, guardianship, or visitation
17 with a child, or any person who is pregnant or is in the process of
18 securing legal custody of any individual who has not attained the age
19 of 18 years.

20 mm. "Housing for older persons" means housing:

21 (1) provided under any State or federal program that the Attorney
22 General determines is specifically designed and operated to assist
23 elderly persons (as defined in the State or federal program); or

24 (2) intended for, and solely occupied by persons 62 years of age
25 or older; or

26 (3) intended and operated for occupancy by at least one person 55
27 years of age or older per unit. In determining whether housing
28 qualifies as housing for older persons under this subsection, the
29 Attorney General shall adopt regulations which require at least the
30 following factors:

31 (a) the existence of significant facilities and services specifically
32 designed to meet the physical or social needs of older persons, or if the
33 provision of such facilities and services is not practicable, that such
34 housing is necessary to provide important housing opportunities for
35 older persons; and

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

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

41 Housing shall not fail to meet the requirements for housing for
42 older persons by reason of: persons residing in such housing as of
43 March 12, 1989 not meeting the age requirements of this subsection,
44 provided that new occupants of such housing meet the age
45 requirements of this subsection; or unoccupied units, provided that
46 such units are reserved for occupancy by persons who meet the age

1 requirements of this subsection.

2 nn. "Genetic characteristic" means any inherited gene or
3 chromosome, or alteration thereof, that is scientifically or medically
4 believed to predispose an individual to a disease, disorder or
5 syndrome, or to be associated with a statistically significant increased
6 risk of development of a disease, disorder or syndrome.

7 oo. "Genetic information" means the information about genes,
8 gene products or inherited characteristics that may derive from an
9 individual or family member.

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

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

16

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

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

21 a. For an employer, because of the race, creed, color, national
22 origin, ancestry, age, marital status, affectional or sexual orientation,
23 genetic information, sex or atypical hereditary cellular or blood trait
24 of any individual, or because of the liability for service in the Armed
25 Forces of the United States or the nationality of any individual, or
26 because of the refusal to submit to a genetic test or make available the
27 results of a genetic test to an employer, to refuse to hire or employ or
28 to bar or to discharge or require to retire, unless justified by lawful
29 considerations other than age, from employment such individual or to
30 discriminate against such individual in compensation or in terms,
31 conditions or privileges of employment; provided, however, it shall not
32 be an unlawful employment practice to refuse to accept for
33 employment an applicant who has received a notice of induction or
34 orders to report for active duty in the armed forces; provided further
35 that nothing herein contained shall be construed to bar an employer
36 from refusing to accept for employment any person on the basis of sex
37 in those certain circumstances where sex is a bona fide occupational
38 qualification, reasonably necessary to the normal operation of the
39 particular business or enterprise; provided further that nothing herein
40 contained shall be construed to bar an employer from refusing to
41 accept for employment or to promote any person over 70 years of age;
42 provided further that it shall not be an unlawful employment practice
43 for a club exclusively social or fraternal to use club membership as a
44 uniform qualification for employment, or for a religious association or
45 organization to utilize religious affiliation as a uniform qualification in
46 the employment of clergy, religious teachers or other employees

1 engaged in the religious activities of the association or organization,
2 or in following the tenets of its religion in establishing and utilizing
3 criteria for employment of an employee; provided further, that it shall
4 not be an unlawful employment practice to require the retirement of
5 any employee who, for the two-year period immediately before
6 retirement, is employed in a bona fide executive or a high
7 policy-making position, if that employee is entitled to an immediate
8 non-forfeitable annual retirement benefit from a pension, profit
9 sharing, savings or deferred retirement plan, or any combination of
10 those plans, of the employer of that employee which equals in the
11 aggregate at least \$27,000.00; and provided further that an employer
12 may restrict employment to citizens of the United States where such
13 restriction is required by federal law or is otherwise necessary to
14 protect the national interest.

15 For the purposes of this subsection, a "bona fide executive" is a top
16 level employee who exercises substantial executive authority over a
17 significant number of employees and a large volume of business. A
18 "high policy-making position" is a position in which a person plays a
19 significant role in developing policy and in recommending the
20 implementation thereof.

21 b. For a labor organization, because of the race, creed, color,
22 national origin, ancestry, age, marital status, affectional or sexual
23 orientation or sex of any individual, or because of the liability for
24 service in the Armed Forces of the United States or nationality of any
25 individual, to exclude or to expel from its membership such individual
26 or to discriminate in any way against any of its members, against any
27 applicant for, or individual included in, any apprentice or other training
28 program or against any employer or any individual employed by an
29 employer; provided, however, that nothing herein contained shall be
30 construed to bar a labor organization from excluding from its
31 apprentice or other training programs any person on the basis of sex
32 in those certain circumstances where sex is a bona fide occupational
33 qualification reasonably necessary to the normal operation of the
34 particular apprentice or other training program.

35 c. For any employer or employment agency to print or circulate or
36 cause to be printed or circulated any statement, advertisement or
37 publication, or to use any form of application for employment, or to
38 make an inquiry in connection with prospective employment, which
39 expresses, directly or indirectly, any limitation, specification or
40 discrimination as to race, creed, color, national origin, ancestry, age,
41 marital status, affectional or sexual orientation or sex or liability of any
42 applicant for employment for service in the Armed Forces of the
43 United States, or any intent to make any such limitation, specification
44 or discrimination, unless based upon a bona fide occupational
45 qualification.

46 d. For any person to take reprisals against any person because that

1 person has opposed any practices or acts forbidden under this act or
2 because that person has filed a complaint, testified or assisted in any
3 proceeding under this act or to coerce, intimidate, threaten or interfere
4 with any person in the exercise or enjoyment of, or on account of that
5 person having aided or encouraged any other person in the exercise or
6 enjoyment of, any right granted or protected by this act.

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

10 f. For any owner, lessee, proprietor, manager, superintendent,
11 agent, or employee of any place of public accommodation directly or
12 indirectly to refuse, withhold from or deny to any person any of the
13 accommodations, advantages, facilities or privileges thereof, or to
14 discriminate against any person in the furnishing thereof, or directly or
15 indirectly to publish, circulate, issue, display, post or mail any written
16 or printed communication, notice, or advertisement to the effect that
17 any of the accommodations, advantages, facilities, or privileges of any
18 such place will be refused, withheld from, or denied to any person on
19 account of the race, creed, color, national origin, ancestry, marital
20 status, sex, affectional or sexual orientation or nationality of such
21 person, or that the patronage or custom thereof of any person of any
22 particular race, creed, color, national origin, ancestry, marital status,
23 sex, affectional or sexual orientation or nationality is unwelcome,
24 objectionable or not acceptable, desired or solicited, and the
25 production of any such written or printed communication, notice or
26 advertisement, purporting to relate to any such place and to be made
27 by any owner, lessee, proprietor, superintendent or manager thereof,
28 shall be presumptive evidence in any action that the same was
29 authorized by such person; provided, however, that nothing contained
30 herein shall be construed to bar any place of public accommodation
31 which is in its nature reasonably restricted exclusively to individuals of
32 one sex, and which shall include but not be limited to any summer
33 camp, day camp, or resort camp, bathhouse, dressing room, swimming
34 pool, gymnasium, comfort station, dispensary, clinic or hospital, or
35 school or educational institution which is restricted exclusively to
36 individuals of one sex, from refusing, withholding from or denying to
37 any individual of the opposite sex any of the accommodations,
38 advantages, facilities or privileges thereof on the basis of sex; provided
39 further, that the foregoing limitation shall not apply to any restaurant
40 as defined in R.S.33:1-1 or place where alcoholic beverages are
41 served.

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

46 (1) To refuse to sell, rent, lease, assign, or sublease or otherwise

1 to deny to or withhold from any person or group of persons any real
2 property or part or portion thereof because of the race, creed, color,
3 national origin, ancestry, marital status, affectional or sexual
4 orientation, familial status or nationality of such person or group of
5 persons;

6 (2) To discriminate against any person or group of persons
7 because of the race, creed, color, national origin, marital status, sex,
8 affectional or sexual orientation or familial status of such person or
9 group of persons in the terms, conditions or privileges of the sale,
10 rental or lease of any real property or part or portion thereof or in the
11 furnishing of facilities or services in connection therewith; or

12 (3) To print, publish, circulate, issue, display, post or mail, or
13 cause to be printed, published, circulated, issued, displayed, posted or
14 mailed any statement, advertisement, publication or sign, or to use any
15 form of application for the purchase, rental, lease, assignment or
16 sublease of any real property or part or portion thereof, or to make
17 any record or inquiry in connection with the prospective purchase,
18 rental, lease, assignment, or sublease of any real property, or part or
19 portion thereof which expresses, directly or indirectly, any limitation,
20 specification or discrimination as to race, creed, color, national origin,
21 ancestry, marital status, sex, affectional or sexual orientation, familial
22 status or nationality, or any intent to make any such limitation,
23 specification or discrimination, and the production of any such
24 statement, advertisement, publicity, sign, form of application, record,
25 or inquiry purporting to be made by any such person shall be
26 presumptive evidence in any action that the same was authorized by
27 such person; provided, however, that nothing contained in this
28 subsection shall be construed to bar any person from refusing to sell,
29 rent, lease, assign or sublease or from advertising or recording a
30 qualification as to sex for any room, apartment, flat in a dwelling or
31 residential facility which is planned exclusively for and occupied by
32 individuals of one sex to any individual of the exclusively opposite sex
33 on the basis of sex.

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

36 (1) To refuse to sell, rent, assign, lease or sublease, or offer for
37 sale, rental, lease, assignment, or sublease any real property or part or
38 portion thereof to any person or group of persons or to refuse to
39 negotiate for the sale, rental, lease, assignment, or sublease of any real
40 property or part or portion thereof to any person or group of persons
41 because of the race, creed, color, national origin, ancestry, marital
42 status, familial status, sex, affectional or sexual orientation or
43 nationality of such person or group of persons, or to represent that any
44 real property or portion thereof is not available for inspection, sale,
45 rental, lease, assignment, or sublease when in fact it is so available, or
46 otherwise to deny or withhold any real property or any part or portion

1 of facilities thereof to or from any person or group of persons because
2 of the race, creed, color, national origin, ancestry, marital status,
3 familial status, sex, affectional or sexual orientation or nationality of
4 such person or group of persons;

5 (2) To discriminate against any person because of his race, creed,
6 color, national origin, ancestry, marital status, familial status, sex or
7 affectional or sexual orientation in the terms, conditions or privileges
8 of the sale, rental, lease, assignment or sublease of any real property
9 or part or portion thereof or in the furnishing of facilities or services
10 in connection therewith; or

11 (3) To print, publish, circulate, issue, display, post, or mail, or
12 cause to be printed, published, circulated, issued, displayed, posted or
13 mailed any statement, advertisement, publication or sign, or to use any
14 form of application for the purchase, rental, lease, assignment, or
15 sublease of any real property or part or portion thereof or to make any
16 record or inquiry in connection with the prospective purchase, rental,
17 lease, assignment, or sublease of any real property or part or portion
18 thereof which expresses, directly or indirectly, any limitation,
19 specification or discrimination as to race, creed, color, national origin,
20 ancestry, marital status, familial status, sex, affectional or sexual
21 orientation or nationality or any intent to make any such limitation,
22 specification or discrimination, and the production of any such
23 statement, advertisement, publicity, sign, form of application, record,
24 or inquiry purporting to be made by any such person shall be
25 presumptive evidence in any action that the same was authorized by
26 such person; provided, however, that nothing contained in this
27 subsection h., shall be construed to bar any person from refusing to
28 sell, rent, lease, assign or sublease or from advertising or recording a
29 qualification as to sex for any room, apartment, flat in a dwelling or
30 residential facility which is planned exclusively for and occupied
31 exclusively by individuals of one sex to any individual of the opposite
32 sex on the basis of sex.

33 i. For any person, bank, banking organization, mortgage company,
34 insurance company or other financial institution, lender or credit
35 institution to whom application is made for any loan or extension of
36 credit including but not limited to an application for financial
37 assistance for the purchase, acquisition, construction, rehabilitation,
38 repair or maintenance of any real property or part or portion thereof
39 or any agent or employee thereof:

40 (1) To discriminate against any person or group of persons
41 because of the race, creed, color, national origin, ancestry, marital
42 status, sex, affectional or sexual orientation or nationality of such
43 person or group of persons or of the prospective occupants or tenants
44 of such real property or part or portion thereof, in the granting,
45 withholding, extending, modifying or renewing, or in the fixing of the
46 rates, terms, conditions or provisions of any such loan, extension of

1 credit or financial assistance or in the extension of services in
2 connection therewith; or

3 (2) To use any form of application for such loan, extension of
4 credit or financial assistance or to make record or inquiry in
5 connection with applications for any such loan, extension of credit or
6 financial assistance which expresses, directly or indirectly, any
7 limitation, specification or discrimination as to race, creed, color,
8 national origin, ancestry, marital status, sex, affectional or sexual
9 orientation or nationality or any intent to make any such limitation,
10 specification or discrimination; unless otherwise required by law or
11 regulation to retain or use such information; or

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

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

19 k. For any real estate broker, real estate salesperson or employee
20 or agent thereof or any other individual, corporation, partnership, or
21 organization, for the purpose of inducing a transaction for the sale or
22 rental of real property from which transaction such person or any of
23 its members may benefit financially, to represent that a change has
24 occurred or will or may occur in the composition with respect to race,
25 creed, color, national origin, ancestry, marital status, familial status,
26 sex, affectional or sexual orientation or nationality of the owners or
27 occupants in the block, neighborhood or area in which the real
28 property is located, and to represent, directly or indirectly, that this
29 change will or may result in undesirable consequences in the block,
30 neighborhood or area in which the real property is located, including,
31 but not limited to the lowering of property values, an increase in
32 criminal or anti-social behavior, or a decline in the quality of schools
33 or other facilities.

34 l. For any person to refuse to buy from, sell to, lease from or to,
35 license, contract with, or trade with, provide goods, services or
36 information to, or otherwise do business with any other person on the
37 basis of the race, creed, color, national origin, ancestry, age, sex,
38 affectional or sexual orientation, marital status, liability for service in
39 the Armed Forces of the United States, or nationality of such other
40 person or of such other person's spouse, partners, members,
41 stockholders, directors, officers, managers, superintendents, agents,
42 employees, business associates, suppliers, or customers. This
43 subsection shall not prohibit refusals or other actions (1) pertaining to
44 employee-employer collective bargaining, labor disputes, or unfair
45 labor practices, or (2) made or taken in connection with a protest of
46 unlawful discrimination or unlawful employment practices.

1 m. For any person to:

2 (1) Grant or accept any letter of credit or other document which
3 evidences the transfer of funds or credit, or enter into any contract for
4 the exchange of goods or services, where the letter of credit, contract,
5 or other document contains any provisions requiring any person to
6 discriminate against or to certify that he, she or it has not dealt with
7 any other person on the basis of the race, creed, color, national origin,
8 ancestry, age, sex, affectional or sexual orientation, marital status,
9 liability for service in the Armed Forces of the United States, or
10 nationality of such other person or of such other person's spouse,
11 partners, members, stockholders, directors, officers, managers,
12 superintendents, agents, employees, business associates, suppliers, or
13 customers.

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

19 The provisions of this subsection shall not apply to any letter of
20 credit, contract, or other document which contains any provision
21 pertaining to employee-employer collective bargaining, a labor dispute
22 or an unfair labor practice, or made in connection with the protest of
23 unlawful discrimination or an unlawful employment practice, if the
24 other provisions of such letter of credit, contract, or other document
25 do not otherwise violate the provisions of this subsection.

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

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

35 (2) Boycotting, commercially blacklisting or refusing to buy from,
36 sell to, lease from or to, license, contract with, provide goods, services
37 or information to, or otherwise do business with any person because
38 that person has not done or refuses to do any such act or any act
39 prohibited by this subsection n.; provided that this subsection n. shall
40 not prohibit refusals or other actions either pertaining to
41 employee-employer collective bargaining, labor disputes, or unfair
42 labor practices, or made or taken in connection with a protest of
43 unlawful discrimination or unlawful employment practices.

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

45

46 6. (New section) No person shall obtain genetic information from

1 an individual, or from an individual's DNA sample, without first
2 obtaining informed consent from the individual or the individual's
3 representative ¹according to regulations promulgated by the
4 Commissioner of Health and Senior Services, in consultation with the
5 Commissioner of Banking and Insurance, pursuant to subsection b. of
6 section 9 of P.L. , c. (C.)(pending before the Legislature as this
7 bill¹.

8 a. The requirements of this section shall not apply to genetic
9 information obtained:

10 (1) By a State, county, municipal or federal law enforcement
11 agency for the purposes of establishing the identity of a person in the
12 course of a criminal investigation or prosecution;

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

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

17 (4) To determine the identity of deceased individuals;

18 (5) For anonymous research where the identity of the subject will
19 not be released;

20 (6) Pursuant to newborn screening requirements established by
21 State or federal law; or

22 (7) As authorized by federal law for the identification of persons.

23 b. In the case of a policy of life insurance or a disability income
24 insurance contract, informed consent shall be obtained pursuant to the
25 provisions of P.L.1985, c.179 (C.17:23A-1 et seq.).

26

27 7. (New section) a. ¹**[**An individual's genetic information is the
28 property of the individual.

29 **b.]**¹ No person shall retain an individual's genetic information
30 without first obtaining authorization ¹under the informed consent
31 requirement of section 6 of P.L. , c. (C.)(pending before the
32 Legislature as this bill)¹ from the individual or the individual's
33 representative, unless:

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

36 (2) Retention 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) Retention is authorized by order of a court of competent
39 jurisdiction; ¹**[or]**¹

40 (4) Retention 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.)¹**[.]; or**

43 (5) Retention of information is for anonymous research where the
44 identity of the subject will not be released.¹

45 ¹**[c.] b.**¹ The DNA sample of an individual from which genetic
46 information has been obtained shall be destroyed promptly upon the

1 specific request of that individual or the individual's representative,
2 unless:

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

5 (2) Retention is authorized by order of a court of competent
6 jurisdiction.

7 **[d.] c.**¹ A DNA sample from an individual who is the subject of
8 a research project shall be destroyed promptly upon completion of the
9 project or withdrawal of the individual from the project, whichever
10 occurs first, unless the individual or the individual's representative
11 directs otherwise by informed consent.

12 **[e.] d.**¹ A DNA sample from an individual for insurance or
13 employment purposes shall be destroyed promptly after the purpose
14 for which the sample was obtained has been accomplished unless
15 retention is authorized by order of a court of competent jurisdiction.

16 **[f.] e.**¹ An individual or an individual's representative, promptly
17 upon request, may inspect, request correction of and obtain genetic
18 information from the records of the individual 'unless the individual
19 directs otherwise by informed consent pursuant to section 6 of P.L. ,
20 c. (C.)(pending before the Legislature as this bill)'¹; except that, in
21 the case of a policy of life insurance or a disability income insurance
22 contract, the provisions of P.L.1985, c.179 (C.17:23A-1 et seq.) shall
23 apply.

24 **[g.] f.**¹ This section applies only to genetic information that can
25 be identified as belonging to an individual or family. This section does
26 not apply to any law, contract or other arrangement that determines a
27 person's rights to compensation relating to substances or information
28 derived from an individual's DNA sample.

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

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

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

41 (3) Disclosure is authorized by order of a court of competent
42 jurisdiction;

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

46 (5) Disclosure is authorized by the tested individual or the tested

- 1 individual's representative by signing a consent which complies with
2 the requirements of the Department of Health 'and Senior Services';
- 3 (6) Disclosure is for the purpose of furnishing genetic information
4 relating to a decedent for medical diagnosis of blood relatives of the
5 decedent;
- 6 (7) Disclosure is for the purpose of identifying bodies;
- 7 (8) Disclosure is pursuant to newborn screening requirements
8 established by State or federal law;
- 9 (9) Disclosure is authorized by federal law for the identification of
10 persons; or
- 11 (10) Disclosure is by an insurer pursuant to the requirements of
12 P.L.1985, c.179 (C.17:23A-1 et seq.).
- 13 b. The provisions of this section apply to any subsequent
14 disclosure by any person after another person has disclosed genetic
15 information or the identity of an individual upon whom a genetic test
16 has been performed.
- 17
- 18 9. (New Section) a. A person 'who requires or requests' that
19 '[performs]' genetic testing 'be done' or receives records, results or
20 findings of genetic testing shall provide the person tested with notice
21 that the test was performed '[or] and' that the '[information
22 was] records, results or findings were' received 'unless otherwise
23 directed by informed consent pursuant to section 6 of P.L. , c.
24 (C.) (pending before the Legislature as this bill'. The notice shall
25 state that the information may not be disclosed to any person without
26 the written consent of the person tested, unless disclosure is made
27 pursuant to one of the exceptions provided for in section 8 of P.L. ,
28 c. (C.)(pending before the Legislature as this bill).
- 29 b. The Commissioner of Health 'and Senior Services, in
30 consultation with the Commissioner of Banking and Insurance,' shall
31 promulgate regulations pursuant to the provisions of the
32 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.)
33 governing procedures for obtaining informed written consent pursuant
34 to P.L. , c. (pending before the Legislature as this bill), '[which shall
35 include a description of the test to be performed, including its purpose,
36 potential uses, and limitations, the meaning of its results, procedures
37 for notifying the applicant of the results, and the right to confidential
38 treatment of the results] except where the procedures for obtaining
39 informed written consent already are governed by national standards
40 for informed consent as designated by the Commissioner of Health and
41 Senior Services by regulation, which may include, but need not be
42 limited to, guidelines from the Office of Protection for Research Risk,
43 the Food and Drug Administration or other appropriate federal
44 agencies'.
- 45 c. The provisions of this section shall not apply to newborn
46 screening requirements established by State or federal law.

1 10. (New section) a. Any person violating the provisions of
2 sections 6 through 9, inclusive, of P.L. , c. (C.) (pending before
3 the Legislature as this bill) shall be a disorderly person and shall be
4 punished by a fine of \$1,000, a prison term of six months, or both.

5 b. Any person who willfully discloses an individual's genetic
6 information to any third party in violation of P.L. , c. (pending
7 before the Legislature as this bill) shall be punished by a fine of
8 \$5,000, a prison term of one year, or both.

9 c. Any person who discloses an individual's genetic information in
10 violation of P.L. , c. (pending before the Legislature as this bill),
11 shall be liable to the individual for all actual damages, including
12 damages for economic, bodily, or emotional harm which is proximately
13 caused by the disclosure.

14

15 11. (New section) Every individual or group hospital service
16 corporation contract providing hospital or medical expense benefits
17 that is delivered, issued, executed or renewed in this State pursuant to
18 P.L.1938, c.366 (C.17:48-1 et seq.) or approved for issuance or
19 renewal in this State by the Commissioner of Insurance on or after the
20 effective date of this act shall not exclude any person or eligible
21 dependent and shall not establish any rates or terms therefor on the
22 basis of an actual or expected health condition or on the basis of any
23 genetic characteristic. For the purposes of this section, "genetic
24 characteristic" means any inherited gene or chromosome, or alteration
25 thereof, that is scientifically or medically believed to predispose an
26 individual to a disease, disorder or syndrome, or to be associated with
27 statistically increased risk of development of a disease, disorder or
28 syndrome.

29

30 12. (New section) Every individual or group medical service
31 corporation contract providing hospital or medical expense benefits
32 that is delivered, issued, executed or renewed in this State pursuant to
33 P.L.1940, c.74 (C.17:48A-1 et seq.) or approved for issuance or
34 renewal in this State by the Commissioner of Insurance on or after the
35 effective date of this act shall not exclude any person or eligible
36 dependent and shall not establish any rates or terms therefor on the
37 basis of an actual or expected health condition or on the basis of any
38 genetic characteristic. For the purposes of this section, "genetic
39 characteristic" means any inherited gene or chromosome, or alteration
40 thereof, that is scientifically or medically believed to predispose an
41 individual to a disease, disorder or syndrome, or to be associated with
42 statistically increased risk of development of a disease, disorder or
43 syndrome.

44

45 13. (New section) Every individual or group health service
46 corporation contract providing hospital or medical expense benefits

1 that is delivered, issued, executed or renewed in this State pursuant to
2 P.L.1985, c.236 (C.17:48E-1 et seq.) or approved for issuance or
3 renewal in this State by the Commissioner of Insurance on or after the
4 effective date of this act shall not exclude any person or eligible
5 dependent and shall not establish any rates or terms therefor on the
6 basis of an actual or expected health condition or on the basis of any
7 genetic characteristic. For the purposes of this section, "genetic
8 characteristic" means any inherited gene or chromosome, or alteration
9 thereof, that is scientifically or medically believed to predispose an
10 individual to a disease, disorder or syndrome, or to be associated with
11 statistically increased risk of development of a disease, disorder or
12 syndrome.

13

14 14. (New section) Every individual health insurance policy
15 providing hospital and medical expense benefits that is delivered,
16 issued, executed or renewed in this State pursuant to Chapter 26 of
17 Title 17B of the New Jersey Statutes or approved for issuance or
18 renewal in this State by the Commissioner of Insurance on or after the
19 effective date of this act shall not exclude any person or eligible
20 dependent and shall not establish any rates or terms therefor on the
21 basis of an actual or expected health condition or on the basis of any
22 genetic characteristic. For the purposes of this section, "genetic
23 characteristic" means any inherited gene or chromosome, or alteration
24 thereof, that is scientifically or medically believed to predispose an
25 individual to a disease, disorder or syndrome, or to be associated with
26 statistically increased risk of development of a disease, disorder or
27 syndrome.

28

29 15. (New section) Every group health insurance policy providing
30 hospital or medical expense benefits that is delivered, issued, executed
31 or renewed in this State pursuant to Chapter 27 of Title 17B of the
32 New Jersey Statutes or approved for issuance or renewal in this State
33 by the Commissioner of Insurance on or after the effective date of this
34 act shall not exclude any person or eligible dependent and shall not
35 establish any rates or terms therefor on the basis of an actual or
36 expected health condition or on the basis of any genetic characteristic.
37 For the purposes of this section, "genetic characteristic" means any
38 inherited gene or chromosome, or alteration thereof, that is
39 scientifically or medically believed to predispose an individual to a
40 disease, disorder or syndrome, or to be associated with statistically
41 increased risk of development of a disease, disorder or syndrome.

42

43 16. (New section) Every contract for health care services that is
44 delivered, issued, executed or renewed in this State pursuant to
45 P.L.1973, c.337 (C.26:2J-1 et seq.) or approved for issuance or
46 renewal in this State on or after the effective date of this act shall not

1 exclude any person or eligible dependent and shall not establish any
2 rates or terms therefor on the basis of an actual or expected health
3 condition or on the basis of any genetic characteristic. For the
4 purposes of this section, "genetic characteristic" means any inherited
5 gene or chromosome, or alteration thereof, that is scientifically or
6 medically believed to predispose an individual to a disease, disorder or
7 syndrome, or to be associated with statistically increased risk of
8 development of a disease, disorder or syndrome.

9

10 17. This act shall take effect immediately and the provisions of
11 sections 6 and 7 shall apply to genetic information obtained on or after
12 the effective date of this act.

13

14

15

16

17 The "Genetic Privacy Act."

SENATE, No. 854

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 26, 1996

By Senator BENNETT

1 AN ACT concerning discrimination on the basis of genetic testing,
2 amending N.J.S.17B:30-12 and amending and supplementing
3 P.L.1945, c.169.

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

7
8 1. (New section) This act shall be known as and may be cited as
9 the "Law Against Genetic Discrimination."

10
11 2. (New section) The Legislature finds and declares:

12 a. The DNA molecule contains information about an individual's
13 probable medical future. This information is written in a code that is
14 rapidly being broken.

15 b. Genetic information is uniquely private and personal information
16 that should not be collected, retained or disclosed without the
17 individual's authorization.

18 c. The improper collection, retention or disclosure of genetic
19 information can lead to significant harm to the individual, including
20 stigmatization and discrimination in areas such as employment,
21 education, health care and insurance.

22 d. An analysis of an individual's DNA provides information not
23 only about an individual, but also about the individual's parents,
24 siblings and children, thereby impacting family privacy, including
25 reproductive decisions.

26 e. Current legal protections for medical information, tissue samples
27 and DNA samples are inadequate to protect genetic privacy.

28 f. Laws for the collection, storage and use of identifiable DNA
29 samples and private genetic information obtained from those samples
30 are needed both to protect individual privacy and to permit legitimate
31 genetic research.

32 g. Progress in mapping the genes that cause breast cancer and
33 other diseases has far outpaced the development of a legal and ethical
34 context in which genetic information can be properly evaluated.

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 h. Effective tests to determine the presence of genes that cause
2 breast cancer and other diseases carry with them the devastating
3 potential for discrimination against carriers of these genes.
4

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

6 17B:30-12 a. No person shall discriminate against any person or
7 group of persons because of race, creed, color, national origin or
8 ancestry of such person or group of persons in the issuance,
9 withholding, extension or renewal of any policy of life or health
10 insurance or annuity or in the fixing of the rates, terms or conditions
11 therefor, or in the issuance or acceptance of any application therefor.

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

16 c. No person shall make or permit any unfair discrimination
17 between individuals of the same class and equal expectation of life in
18 the rates charged for any policy of life insurance or contract of annuity
19 or in the dividends or other benefits payable thereon, or in any other
20 of the terms and conditions of such policy of life insurance or contract
21 of annuity.

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

28 e. No person shall discriminate against any person on the basis of
29 genetic information in the issuance, withholding, extension or renewal
30 of any policy of life or health insurance or annuity or in the fixing of
31 the rates, terms or conditions therefor, or in the issuance or acceptance
32 of any application therefor.

33 As used in this subsection:

34 "Genetic characteristic" means any gene or chromosome, or
35 alteration thereof, that is scientifically or medically believed to cause
36 a disease, disorder or syndrome, or to be associated with statistically
37 increased risk of development of a disease, disorder or syndrome.

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

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

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

1 of annuity to any person.

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

3

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

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

8 a. "Person" includes one or more individuals, partnerships,
9 associations, organizations, labor organizations, corporations, legal
10 representatives, trustees, trustees in bankruptcy, receivers, and
11 fiduciaries.

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

14 c. "Labor organization" includes any organization which exists and
15 is constituted for the purpose, in whole or in part, of collective
16 bargaining, or of dealing with employers concerning grievances, terms
17 or conditions of employment, or of other mutual aid or protection in
18 connection with employment.

19 d. "Unlawful employment practice" and "unlawful discrimination"
20 include only those unlawful practices and acts specified in section 11
21 of this act.

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

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

28 g. "Liability for service in the Armed Forces of the United States"
29 means subject to being ordered as an individual or member of an
30 organized unit into active service in the Armed Forces of the United
31 States by reason of membership in the National Guard, naval militia or
32 a reserve component of the Armed Forces of the United States, or
33 subject to being inducted into such armed forces through a system of
34 national selective service.

35 h. "Division" means the "Division on Civil Rights" created by this
36 act.

37 i. "Attorney General" means the Attorney General of the State of
38 New Jersey or his representative or designee.

39 j. "Commission" means the Commission on Civil Rights created by
40 this act.

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

42 l. "A place of public accommodation" shall include, but not be
43 limited to: any tavern, roadhouse, hotel, motel, trailer camp, summer
44 camp, day camp, or resort camp, whether for entertainment of
45 transient guests or accommodation of those seeking health, recreation
46 or rest; any producer, manufacturer, wholesaler, distributor, retail

1 shop, store, establishment, or concession dealing with goods or
2 services of any kind; any restaurant, eating house, or place where food
3 is sold for consumption on the premises; any place maintained for the
4 sale of ice cream, ice and fruit preparations or their derivatives, soda
5 water or confections, or where any beverages of any kind are retailed
6 for consumption on the premises; any garage, any public conveyance
7 operated on land or water, or in the air, any stations and terminals
8 thereof; any bathhouse, boardwalk, or seashore accommodation; any
9 auditorium, meeting place, or hall; any theatre, motion-picture house,
10 music hall, roof garden, skating rink, swimming pool, amusement and
11 recreation park, fair, bowling alley, gymnasium, shooting gallery,
12 billiard and pool parlor, or other place of amusement; any comfort
13 station; any dispensary, clinic or hospital; any public library; any
14 kindergarten, primary and secondary school, trade or business school,
15 high school, academy, college and university, or any educational
16 institution under the supervision of the State Board of Education, or
17 the Commissioner of Education of the State of New Jersey. Nothing
18 herein contained shall be construed to include or to apply to any
19 institution, bona fide club, or place of accommodation, which is in its
20 nature distinctly private; nor shall anything herein contained apply to
21 any educational facility operated or maintained by a bona fide religious
22 or sectarian institution, and the right of a natural parent or one in loco
23 parentis to direct the education and upbringing of a child under his
24 control is hereby affirmed; nor shall anything herein contained be
25 construed to bar any private secondary or post secondary school from
26 using in good faith criteria other than race, creed, color, national
27 origin, ancestry or affectional or sexual orientation in the admission of
28 students.

29 m. "A publicly assisted housing accommodation" shall include all
30 housing built with public funds or public assistance pursuant to
31 P.L.1949, c.300, P.L.1941, c.213, P.L.1944, c.169, P.L.1949, c.303,
32 P.L.1938, c.19, P.L.1938, c.20, P.L.1946, c.52, and P.L.1949, c.184,
33 and all housing financed in whole or in part by a loan, whether or not
34 secured by a mortgage, the repayment of which is guaranteed or
35 insured by the federal government or any agency thereof.

36 n. The term "real property" includes real estate, lands, tenements
37 and hereditaments, corporeal and incorporeal, and leaseholds,
38 provided, however, that, except as to publicly assisted housing
39 accommodations, the provisions of this act shall not apply to the
40 rental: (1) of a single apartment or flat in a two-family dwelling, the
41 other occupancy unit of which is occupied by the owner as a residence
42 or the household of the owner's family at the time of such rental; or (2)
43 of a room or rooms to another person or persons by the owner or
44 occupant of a one-family dwelling occupied by the owner or occupant
45 as a residence or the household of the owner's or occupant's family at
46 the time of such rental. Nothing herein contained shall be construed

1 to bar any religious or denominational institution or organization, or
2 any organization operated for charitable or educational purposes,
3 which is operated, supervised or controlled by or in connection with
4 a religious organization, in the sale, lease or rental of real property,
5 from limiting admission to or giving preference to persons of the same
6 religion or denomination or from making such selection as is
7 calculated by such organization to promote the religious principles for
8 which it is established or maintained. Nor does any provision under
9 this act regarding discrimination on the basis of familial status apply
10 with respect to housing for older persons.

11 o. "Real estate broker" includes a person, firm or corporation who,
12 for a fee, commission or other valuable consideration, or by reason of
13 promise or reasonable expectation thereof, lists for sale, sells,
14 exchanges, buys or rents, or offers or attempts to negotiate a sale,
15 exchange, purchase, or rental of real estate or an interest therein, or
16 collects or offers or attempts to collect rent for the use of real estate,
17 or solicits for prospective purchasers or assists or directs in the
18 procuring of prospects or the negotiation or closing of any transaction
19 which does or is contemplated to result in the sale, exchange, leasing,
20 renting or auctioning of any real estate, or negotiates, or offers or
21 attempts or agrees to negotiate a loan secured or to be secured by
22 mortgage or other encumbrance upon or transfer of any real estate for
23 others; or any person who, for pecuniary gain or expectation of
24 pecuniary gain conducts a public or private competitive sale of lands
25 or any interest in lands. In the sale of lots, the term "real estate
26 broker" shall also include any person, partnership, association or
27 corporation employed by or on behalf of the owner or owners of lots
28 or other parcels of real estate, at a stated salary, or upon a
29 commission, or upon a salary and commission or otherwise, to sell
30 such real estate, or any parts thereof, in lots or other parcels, and who
31 shall sell or exchange, or offer or attempt or agree to negotiate the
32 sale or exchange, of any such lot or parcel of real estate.

33 p. "Real estate salesperson" includes any person who, for
34 compensation, valuable consideration or commission, or other thing of
35 value, or by reason of a promise or reasonable expectation thereof, is
36 employed by and operates under the supervision of a licensed real
37 estate broker to sell or offer to sell, buy or offer to buy or negotiate
38 the purchase, sale or exchange of real estate, or offers or attempts to
39 negotiate a loan secured or to be secured by a mortgage or other
40 encumbrance upon or transfer of real estate, or to lease or rent, or
41 offer to lease or rent any real estate for others, or to collect rents for
42 the use of real estate, or to solicit for prospective purchasers or lessees
43 of real estate, or who is employed by a licensed real estate broker to
44 sell or offer to sell lots or other parcels of real estate, at a stated
45 salary, or upon a commission, or upon a salary and commission, or
46 otherwise to sell real estate, or any parts thereof, in lots or other

1 parcels.

2 q. "Handicapped" means suffering from physical disability,
3 infirmity, malformation or disfigurement which is caused by bodily
4 injury, birth defect or illness including epilepsy, and which shall
5 include, but not be limited to, any degree of paralysis, amputation, lack
6 of physical coordination, blindness or visual impediment, deafness or
7 hearing impediment, muteness or speech impediment or physical
8 reliance on a service or guide dog, wheelchair, or other remedial
9 appliance or device, or from any mental, psychological or
10 developmental disability resulting from anatomical, psychological,
11 physiological or neurological conditions which prevents the normal
12 exercise of any bodily or mental functions or is demonstrable,
13 medically or psychologically, by accepted clinical or laboratory
14 diagnostic techniques. Handicapped shall also mean suffering from
15 AIDS or HIV infection.

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

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

28 t. "Guide or service dog trainer" means any person who is
29 employed by an organization generally recognized by agencies
30 involved in the rehabilitation of the blind, handicapped or deaf as
31 reputable and competent to provide dogs with training, and who is
32 actually involved in the training process.

33 u. "Housing accommodation" means any publicly assisted housing
34 accommodation or any real property, or portion thereof, which is used
35 or occupied, or is intended, arranged, or designed to be used or
36 occupied, as the home, residence or sleeping place of one or more
37 persons, but shall not include any single family residence the occupants
38 of which rent, lease, or furnish for compensation not more than one
39 room therein.

40 v. "Public facility" means any place of public accommodation and
41 any street, highway, sidewalk, walkway, public building, and any other
42 place or structure to which the general public is regularly, normally or
43 customarily permitted or invited.

44 w. "Deaf person" means any person whose hearing is so severely
45 impaired that the person is unable to hear and understand normal
46 conversational speech through the unaided ear alone, and who must

1 depend primarily on supportive device or visual communication such
2 as writing, lip reading, sign language, and gestures.

3 x. "Atypical hereditary cellular or blood trait" means sickle cell
4 trait, hemoglobin C trait, thalassemia trait, Tay-Sachs trait, or cystic
5 fibrosis trait.

6 y. "Sickle cell trait" means the condition wherein the major natural
7 hemoglobin components present in the blood of the individual are
8 hemoglobin A (normal) and hemoglobin S (sickle hemoglobin) as
9 defined by standard chemical and physical analytic techniques,
10 including electrophoresis; and the proportion of hemoglobin A is
11 greater than the proportion of hemoglobin S or one natural parent of
12 the individual is shown to have only normal hemoglobin components
13 (hemoglobin A, hemoglobin A2, hemoglobin F) in the normal
14 proportions by standard chemical and physical analytic tests.

15 z. "Hemoglobin C trait" means the condition wherein the major
16 natural hemoglobin components present in the blood of the individual
17 are hemoglobin A (normal) and hemoglobin C as defined by standard
18 chemical and physical analytic techniques, including electrophoresis;
19 and the proportion of hemoglobin A is greater than the proportion of
20 hemoglobin C or one natural parent of the individual is shown to have
21 only normal hemoglobin components (hemoglobin A, hemoglobin A2,
22 hemoglobin F) in normal proportions by standard chemical and
23 physical analytic tests.

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

27 bb. "Tay-Sachs trait" means the presence of the Tay-Sachs gene
28 which in combination with another similar gene results in the chronic
29 hereditary disease Tay-Sachs.

30 cc. "Cystic fibrosis trait" means the presence of the cystic fibrosis
31 gene which in combination with another similar gene results in the
32 chronic hereditary disease cystic fibrosis.

33 dd. "Service dog" means any dog individually trained to a
34 handicapped person's requirements including, but not limited to
35 minimal protection work, rescue work, pulling a wheelchair or
36 retrieving dropped items.

37 ee. "Qualified Medicaid applicant" means an individual who is a
38 qualified applicant pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.).

39 ff. "AIDS" means acquired immune deficiency syndrome as defined
40 by the Centers for Disease Control of the United States Public Health
41 Service.

42 gg. "HIV infection" means infection with the human
43 immunodeficiency virus or any other related virus identified as a
44 probable causative agent of AIDS.

45 hh. "Affectional or sexual orientation" means male or female
46 heterosexuality, homosexuality or bisexuality by inclination, practice,

1 identity or expression, having a history thereof or being perceived,
2 presumed or identified by others as having such an orientation.

3 ii. "Heterosexuality" means affectional, emotional or physical
4 attraction or behavior which is primarily directed towards persons of
5 the other gender.

6 jj. "Homosexuality" means affectional, emotional or physical
7 attraction or behavior which is primarily directed towards persons of
8 the same gender.

9 kk. "Bisexuality" means affectional, emotional or physical
10 attraction or behavior which is directed towards persons of either
11 gender.

12 ll. "Familial status" means being the natural parent of a child, the
13 adoptive parent of a child, the foster parent of a child, having a "parent
14 and child relationship" with a child as defined by State law, or having
15 sole or joint legal or physical custody, care, guardianship, or visitation
16 with a child, or any person who is pregnant or is in the process of
17 securing legal custody of any individual who has not attained the age
18 of 18 years.

19 mm. "Housing for older persons" means housing:

20 (1) provided under any State or federal program that the Attorney
21 General determines is specifically designed and operated to assist
22 elderly persons (as defined in the State or federal program); or

23 (2) intended for, and solely occupied by persons 62 years of age or
24 older; or

25 (3) intended and operated for occupancy by at least one person 55
26 years of age or older per unit. In determining whether housing
27 qualifies as housing for older persons under this subsection, the
28 Attorney General shall adopt regulations which require at least the
29 following factors:

30 (a) the existence of significant facilities and services specifically
31 designed to meet the physical or social needs of older persons, or if the
32 provision of such facilities and services is not practicable, that such
33 housing is necessary to provide important housing opportunities for
34 older persons; and

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

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

40 Housing shall not fail to meet the requirements for housing for
41 older persons by reason of: persons residing in such housing as of
42 March 12, 1989 not meeting the age requirements of this subsection,
43 provided that new occupants of such housing meet the age
44 requirements of this subsection; or unoccupied units, provided that
45 such units are reserved for occupancy by persons who meet the age
46 requirements of this subsection.

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

5 oo. "Genetic information" means the information about an
6 individual or family obtained from a genetic test or an individual's
7 DNA sample.

8 pp. "Genetic test" means a test for determining the presence or
9 absence of genetic characteristics in an individual, including tests of
10 nucleic acids such as DNA, RNA and mitochondrial DNA,
11 chromosomes or proteins in order to diagnose a genetic characteristic.
12 (cf: P.L.1992, c.146, s.4)

13

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

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

18 a. For an employer, because of the race, creed, color, national
19 origin, ancestry, age, marital status, affectional or sexual orientation,
20 genetic information, sex or atypical hereditary cellular or blood trait
21 of any individual, or because of the liability for service in the Armed
22 Forces of the United States or the nationality of any individual, or
23 because of the refusal to submit to a genetic test, to refuse to hire or
24 employ or to bar or to discharge or require to retire, unless justified by
25 lawful considerations other than age, from employment such individual
26 or to discriminate against such individual in compensation or in terms,
27 conditions or privileges of employment; provided, however, it shall not
28 be an unlawful employment practice to refuse to accept for
29 employment an applicant who has received a notice of induction or
30 orders to report for active duty in the armed forces; provided further
31 that nothing herein contained shall be construed to bar an employer
32 from refusing to accept for employment any person on the basis of sex
33 in those certain circumstances where sex is a bona fide occupational
34 qualification, reasonably necessary to the normal operation of the
35 particular business or enterprise; provided further that nothing herein
36 contained shall bar an employer from requiring an employee or
37 prospective employee to submit to a genetic test which complies with
38 the provisions of sections 6 through 9 of P.L. ., c. (C.)(pending
39 before the Legislature as this bill) in order to determine a bona fide
40 occupational qualification; provided further that nothing herein
41 contained shall be construed to bar an employer from refusing to
42 accept for employment or to promote any person over 70 years of age;
43 provided further that it shall not be an unlawful employment practice
44 for a club exclusively social or fraternal to use club membership as a
45 uniform qualification for employment, or for a religious association or
46 organization to utilize religious affiliation as a uniform qualification in

1 the employment of clergy, religious teachers or other employees
2 engaged in the religious activities of the association or organization,
3 or in following the tenets of its religion in establishing and utilizing
4 criteria for employment of an employee; provided further, that it shall
5 not be an unlawful employment practice to require the retirement of
6 any employee who, for the two-year period immediately before
7 retirement, is employed in a bona fide executive or a high
8 policy-making position, if that employee is entitled to an immediate
9 non-forfeitable annual retirement benefit from a pension, profit
10 sharing, savings or deferred retirement plan, or any combination of
11 those plans, of the employer of that employee which equals in the
12 aggregate at least \$27,000.00; and provided further that an employer
13 may restrict employment to citizens of the United States where such
14 restriction is required by federal law or is otherwise necessary to
15 protect the national interest.

16 For the purposes of this subsection, a "bona fide executive" is a top
17 level employee who exercises substantial executive authority over a
18 significant number of employees and a large volume of business. A
19 "high policy-making position" is a position in which a person plays a
20 significant role in developing policy and in recommending the
21 implementation thereof.

22 b. For a labor organization, because of the race, creed, color,
23 national origin, ancestry, age, marital status, affectional or sexual
24 orientation or sex of any individual, or because of the liability for
25 service in the Armed Forces of the United States or nationality of any
26 individual, to exclude or to expel from its membership such individual
27 or to discriminate in any way against any of its members, against any
28 applicant for, or individual included in, any apprentice or other training
29 program or against any employer or any individual employed by an
30 employer; provided, however, that nothing herein contained shall be
31 construed to bar a labor organization from excluding from its
32 apprentice or other training programs any person on the basis of sex
33 in those certain circumstances where sex is a bona fide occupational
34 qualification reasonably necessary to the normal operation of the
35 particular apprentice or other training program.

36 c. For any employer or employment agency to print or circulate or
37 cause to be printed or circulated any statement, advertisement or
38 publication, or to use any form of application for employment, or to
39 make an inquiry in connection with prospective employment, which
40 expresses, directly or indirectly, any limitation, specification or
41 discrimination as to race, creed, color, national origin, ancestry, age,
42 marital status, affectional or sexual orientation or sex or liability of any
43 applicant for employment for service in the Armed Forces of the
44 United States, or any intent to make any such limitation, specification
45 or discrimination, unless based upon a bona fide occupational
46 qualification.

1 d. For any person to take reprisals against any person because that
2 person has opposed any practices or acts forbidden under this act or
3 because that person has filed a complaint, testified or assisted in any
4 proceeding under this act or to coerce, intimidate, threaten or interfere
5 with any person in the exercise or enjoyment of, or on account of that
6 person having aided or encouraged any other person in the exercise or
7 enjoyment of, any right granted or protected by this act.

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

11 f. For any owner, lessee, proprietor, manager, superintendent,
12 agent, or employee of any place of public accommodation directly or
13 indirectly to refuse, withhold from or deny to any person any of the
14 accommodations, advantages, facilities or privileges thereof, or to
15 discriminate against any person in the furnishing thereof, or directly or
16 indirectly to publish, circulate, issue, display, post or mail any written
17 or printed communication, notice, or advertisement to the effect that
18 any of the accommodations, advantages, facilities, or privileges of any
19 such place will be refused, withheld from, or denied to any person on
20 account of the race, creed, color, national origin, ancestry, marital
21 status, sex, affectional or sexual orientation or nationality of such
22 person, or that the patronage or custom thereof of any person of any
23 particular race, creed, color, national origin, ancestry, marital status,
24 sex, affectional or sexual orientation or nationality is unwelcome,
25 objectionable or not acceptable, desired or solicited, and the
26 production of any such written or printed communication, notice or
27 advertisement, purporting to relate to any such place and to be made
28 by any owner, lessee, proprietor, superintendent or manager thereof,
29 shall be presumptive evidence in any action that the same was
30 authorized by such person; provided, however, that nothing contained
31 herein shall be construed to bar any place of public accommodation
32 which is in its nature reasonably restricted exclusively to individuals of
33 one sex, and which shall include but not be limited to any summer
34 camp, day camp, or resort camp, bathhouse, dressing room, swimming
35 pool, gymnasium, comfort station, dispensary, clinic or hospital, or
36 school or educational institution which is restricted exclusively to
37 individuals of one sex, from refusing, withholding from or denying to
38 any individual of the opposite sex any of the accommodations,
39 advantages, facilities or privileges thereof on the basis of sex; provided
40 further, that the foregoing limitation shall not apply to any restaurant
41 as defined in R.S.33:1-1 or place where alcoholic beverages are
42 served.

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

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

7 (2) To discriminate against any person or group of persons because
8 of the race, creed, color, national origin, marital status, sex, affectional
9 or sexual orientation or familial status of such person or group of
10 persons in the terms, conditions or privileges of the sale, rental or
11 lease of any real property or part or portion thereof or in the
12 furnishing of facilities or services in connection therewith; or

13 (3) To print, publish, circulate, issue, display, post or mail, or
14 cause to be printed, published, circulated, issued, displayed, posted or
15 mailed any statement, advertisement, publication or sign, or to use any
16 form of application for the purchase, rental, lease, assignment or
17 sublease of any real property or part or portion thereof, or to make
18 any record or inquiry in connection with the prospective purchase,
19 rental, lease, assignment, or sublease of any real property, or part or
20 portion thereof which expresses, directly or indirectly, any limitation,
21 specification or discrimination as to race, creed, color, national origin,
22 ancestry, marital status, sex, affectional or sexual orientation, familial
23 status or nationality, or any intent to make any such limitation,
24 specification or discrimination, and the production of any such
25 statement, advertisement, publicity, sign, form of application, record,
26 or inquiry purporting to be made by any such person shall be
27 presumptive evidence in any action that the same was authorized by
28 such person; provided, however, that nothing contained in this
29 subsection shall be construed to bar any person from refusing to sell,
30 rent, lease, assign or sublease or from advertising or recording a
31 qualification as to sex for any room, apartment, flat in a dwelling or
32 residential facility which is planned exclusively for and occupied by
33 individuals of one sex to any individual of the exclusively opposite sex
34 on the basis of sex.

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

37 (1) To refuse to sell, rent, assign, lease or sublease, or offer for
38 sale, rental, lease, assignment, or sublease any real property or part or
39 portion thereof to any person or group of persons or to refuse to
40 negotiate for the sale, rental, lease, assignment, or sublease of any real
41 property or part or portion thereof to any person or group of persons
42 because of the race, creed, color, national origin, ancestry, marital
43 status, familial status, sex, affectional or sexual orientation or
44 nationality of such person or group of persons, or to represent that any
45 real property or portion thereof is not available for inspection, sale,
46 rental, lease, assignment, or sublease when in fact it is so available, or

1 otherwise to deny or withhold any real property or any part or portion
2 of facilities thereof to or from any person or group of persons because
3 of the race, creed, color, national origin, ancestry, marital status,
4 familial status, sex, affectional or sexual orientation or nationality of
5 such person or group of persons;

6 (2) To discriminate against any person because of his race, creed,
7 color, national origin, ancestry, marital status, familial status, sex or
8 affectional or sexual orientation in the terms, conditions or privileges
9 of the sale, rental, lease, assignment or sublease of any real property
10 or part or portion thereof or in the furnishing of facilities or services
11 in connection therewith; or

12 (3) To print, publish, circulate, issue, display, post, or mail, or
13 cause to be printed, published, circulated, issued, displayed, posted or
14 mailed any statement, advertisement, publication or sign, or to use any
15 form of application for the purchase, rental, lease, assignment, or
16 sublease of any real property or part or portion thereof or to make any
17 record or inquiry in connection with the prospective purchase, rental,
18 lease, assignment, or sublease of any real property or part or portion
19 thereof which expresses, directly or indirectly, any limitation,
20 specification or discrimination as to race, creed, color, national origin,
21 ancestry, marital status, familial status, sex, affectional or sexual
22 orientation or nationality or any intent to make any such limitation,
23 specification or discrimination, and the production of any such
24 statement, advertisement, publicity, sign, form of application, record,
25 or inquiry purporting to be made by any such person shall be
26 presumptive evidence in any action that the same was authorized by
27 such person; provided, however, that nothing contained in this
28 subsection h., shall be construed to bar any person from refusing to
29 sell, rent, lease, assign or sublease or from advertising or recording a
30 qualification as to sex for any room, apartment, flat in a dwelling or
31 residential facility which is planned exclusively for and occupied
32 exclusively by individuals of one sex to any individual of the opposite
33 sex on the basis of sex.

34 i. For any person, bank, banking organization, mortgage company,
35 insurance company or other financial institution, lender or credit
36 institution to whom application is made for any loan or extension of
37 credit including but not limited to an application for financial
38 assistance for the purchase, acquisition, construction, rehabilitation,
39 repair or maintenance of any real property or part or portion thereof
40 or any agent or employee thereof:

41 (1) To discriminate against any person or group of persons because
42 of the race, creed, color, national origin, ancestry, marital status, sex,
43 affectional or sexual orientation or nationality of such person or group
44 of persons or of the prospective occupants or tenants of such real
45 property or part or portion thereof, in the granting, withholding,
46 extending, modifying or renewing, or in the fixing of the rates, terms,

1 conditions or provisions of any such loan, extension of credit or
2 financial assistance or in the extension of services in connection
3 therewith; or

4 (2) To use any form of application for such loan, extension of
5 credit or financial assistance or to make record or inquiry in
6 connection with applications for any such loan, extension of credit or
7 financial assistance which expresses, directly or indirectly, any
8 limitation, specification or discrimination as to race, creed, color,
9 national origin, ancestry, marital status, sex, affectional or sexual
10 orientation or nationality or any intent to make any such limitation,
11 specification or discrimination; unless otherwise required by law or
12 regulation to retain or use such information; or

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

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

20 k. For any real estate broker, real estate salesperson or employee
21 or agent thereof or any other individual, corporation, partnership, or
22 organization, for the purpose of inducing a transaction for the sale or
23 rental of real property from which transaction such person or any of
24 its members may benefit financially, to represent that a change has
25 occurred or will or may occur in the composition with respect to race,
26 creed, color, national origin, ancestry, marital status, familial status,
27 sex, affectional or sexual orientation or nationality of the owners or
28 occupants in the block, neighborhood or area in which the real
29 property is located, and to represent, directly or indirectly, that this
30 change will or may result in undesirable consequences in the block,
31 neighborhood or area in which the real property is located, including,
32 but not limited to the lowering of property values, an increase in
33 criminal or anti-social behavior, or a decline in the quality of schools
34 or other facilities.

35 l. For any person to refuse to buy from, sell to, lease from or to,
36 license, contract with, or trade with, provide goods, services or
37 information to, or otherwise do business with any other person on the
38 basis of the race, creed, color, national origin, ancestry, age, sex,
39 affectional or sexual orientation, marital status, liability for service in
40 the Armed Forces of the United States, or nationality of such other
41 person or of such other person's spouse, partners, members,
42 stockholders, directors, officers, managers, superintendents, agents,
43 employees, business associates, suppliers, or customers. This
44 subsection shall not prohibit refusals or other actions (1) pertaining to
45 employee-employer collective bargaining, labor disputes, or unfair
46 labor practices, or (2) made or taken in connection with a protest of

1 unlawful discrimination or unlawful employment practices.

2 m. For any person to:

3 (1) Grant or accept any letter of credit or other document which
4 evidences the transfer of funds or credit, or enter into any contract for
5 the exchange of goods or services, where the letter of credit, contract,
6 or other document contains any provisions requiring any person to
7 discriminate against or to certify that he, she or it has not dealt with
8 any other person on the basis of the race, creed, color, national origin,
9 ancestry, age, sex, affectional or sexual orientation, marital status,
10 liability for service in the Armed Forces of the United States, or
11 nationality of such other person or of such other person's spouse,
12 partners, members, stockholders, directors, officers, managers,
13 superintendents, agents, employees, business associates, suppliers, or
14 customers.

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

19 The provisions of this subsection shall not apply to any letter of
20 credit, contract, or other document which contains any provision
21 pertaining to employee-employer collective bargaining, a labor dispute
22 or an unfair labor practice, or made in connection with the protest of
23 unlawful discrimination or an unlawful employment practice, if the
24 other provisions of such letter of credit, contract, or other document
25 do not otherwise violate the provisions of this subsection.

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

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

35 (2) Boycotting, commercially blacklisting or refusing to buy from,
36 sell to, lease from or to, license, contract with, provide goods, services
37 or information to, or otherwise do business with any person because
38 that person has not done or refuses to do any such act or any act
39 prohibited by this subsection n.; provided that this subsection n. shall
40 not prohibit refusals or other actions either pertaining to
41 employee-employer collective bargaining, labor disputes, or unfair
42 labor practices, or made or taken in connection with a protest of
43 unlawful discrimination or unlawful employment practices.

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

45

46 6. (New section) No person shall obtain genetic information from

1 an individual, or from an individual's DNA sample, without first
2 obtaining informed consent from the individual or the individual's
3 representative, except:

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

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

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

11 d. To determine the identity of deceased individuals;

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

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

15

16 7. (New section) a. An individual's genetic information is the
17 property of the individual.

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

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

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

25 (3) Retention is authorized by order of a court of competent
26 jurisdiction; or

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

30 c. The DNA sample of an individual from which genetic
31 information has been obtained shall be destroyed promptly upon the
32 specific request of that individual or the individual's representative,
33 unless:

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

36 (2) Retention is authorized by order of a court of competent
37 jurisdiction.

38 d. A DNA sample from an individual who is the subject of a
39 research project shall be destroyed promptly upon completion of the
40 project or withdrawal of the individual from the project, whichever
41 occurs first, unless the individual or the individual's representative
42 directs otherwise by informed consent.

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

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

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

9

10 8. (New section) a. Regardless of the manner of receipt or the
11 source of genetic information, including information received from an
12 individual, a person may not disclose or be compelled, by subpoena or
13 any other means, to disclose the identity of an individual upon whom
14 a genetic test has been performed or to disclose genetic information
15 about the individual in a manner that permits identification of the
16 individual, unless:

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

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

21 (3) Disclosure is authorized by order of a court of competent
22 jurisdiction;

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

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

29 (6) Disclosure is for the purpose of furnishing genetic information
30 relating to a decedent for medical diagnosis of blood relatives of the
31 decedent;

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

33 (8) Disclosure is authorized by federal law for the identification of
34 persons.

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

38

39 9. (New Section) a. A person that performs genetic testing or
40 receives records, results or findings of genetic testing shall provide the
41 person tested with notice that the test was performed or that the
42 information was received. The notice shall state that the information
43 may not be disclosed to any person without the written consent of the
44 person tested, unless disclosure is made pursuant to one of the
45 exceptions provided for in section 8 of this 1996 amendatory and
46 supplementary act.

1 b. The Commissioner of Health shall promulgate regulations
2 pursuant to the provisions of the "Administrative Procedure Act,"
3 P.L.1968, c.410 (C.52:14B-1 et seq.) governing procedures for
4 obtaining informed written consent pursuant to this act, which shall
5 include a description of the test to be performed, including its purpose,
6 potential uses, and limitations, the meaning of its results, procedures
7 for notifying the applicant of the results, and the right to confidential
8 treatment of the results.

9
10 10. (New section) a. Any person violating the provisions of this
11 1996 amendatory and supplementary act shall be a disorderly person
12 and shall be punished by a fine of \$1,000, a prison term of six months,
13 or both.

14 b. Any person who willfully discloses an individual's genetic
15 information to any third party in violation of this 1996 amendatory and
16 supplementary act shall be punished by a fine of \$5,000, a prison term
17 of one year, or both.

18 c. Any person who discloses an individual's genetic information in
19 violation of this act shall be liable to the individual for all actual
20 damages, including damages for economic, bodily, or emotional harm
21 which is proximately caused by the disclosure.

22
23 11. This act shall take effect immediately.

24
25
26 *SPONSOR'S* STATEMENT

27
28 This bill, the "Law Against Genetic Discrimination," provides a
29 comprehensive statutory framework for the regulation of genetic
30 testing and the retention and disclosure of information obtained from
31 genetic tests. The bill provides protection from unauthorized genetic
32 testing, the unauthorized use of genetic information, and from
33 discrimination against individuals on the basis of genetic information.

34 Progress in mapping the genes that cause breast cancer and other
35 diseases has far outpaced the development of a legal and ethical
36 context in which genetic information can be properly evaluated.
37 Effective tests to determine the presence of genes that cause breast
38 cancer and other diseases carry with them the devastating potential for
39 discrimination against carriers of these genes. This bill is intended to
40 provide a legal and ethical context in which genetic information can be
41 properly evaluated and to protect against genetic discrimination.

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

1 require employees or prospective employees to submit to a genetic test
2 to determine a bona fide occupational qualification.

3 The bill prohibits life and health insurers from discriminating against
4 any person on the basis of genetic information in the issuance,
5 withholding, extension or renewal of any life or health insurance policy
6 or annuity, or in the fixing of rates, terms or conditions of a life or
7 health insurance policy, or in the issuance or acceptance of any life or
8 health insurance application.

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

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

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

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

33 The bill also provides that any person violating its provisions shall
34 be a disorderly person and shall be punished by a fine of \$1,000, a
35 prison term of six months, or both. Any person who willfully discloses
36 an individual's genetic information to any third party in violation of the
37 bill's provisions shall be punished by a fine of \$5,000, a prison term of
38 one year, or both. Any person who discloses an individual's genetic
39 information in violation of the bill's provisions shall be liable to the
40 individual for all actual damages, including damages for economic,
41 bodily, or emotional harm which is proximately caused by the
42 disclosure.

43

44

45

46 The "Law Against Genetic Discrimination."

SENATE, No. 695

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 15, 1996

By Senators SINAGRA and MATHEUSSEN

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 individual on the basis
34 of genetic information or the refusal to submit to a genetic test or

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 make available the results of a genetic test to the person in the
2 issuance, withholding, extension or renewal of any policy of life or
3 health insurance or annuity or in the fixing of the rates, terms or
4 conditions therefor, or in the issuance or acceptance of any application
5 therefor.

6 As used in this subsection:

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

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

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

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

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

22

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

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

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

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

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

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

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

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

1 g. "Liability for service in the Armed Forces of the United States"
2 means subject to being ordered as an individual or member of an
3 organized unit into active service in the Armed Forces of the United
4 States by reason of membership in the National Guard, naval militia or
5 a reserve component of the Armed Forces of the United States, or
6 subject to being inducted into such armed forces through a system of
7 national selective service.

8 h. "Division" means the "Division on Civil Rights" created by this
9 act.

10 i. "Attorney General" means the Attorney General of the State of
11 New Jersey or his representative or designee.

12 j. "Commission" means the Commission on Civil Rights created by
13 this act.

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

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

1 orientation in the admission of students.

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

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

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

1 or other parcels of real estate, at a stated salary, or upon a
2 commission, or upon a salary and commission or otherwise, to sell
3 such real estate, or any parts thereof, in lots or other parcels, and who
4 shall sell or exchange, or offer or attempt or agree to negotiate the
5 sale or exchange, of any such lot or parcel of real estate.

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

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

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

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

1 t. "Guide or service dog trainer" means any person who is
2 employed by an organization generally recognized by agencies
3 involved in the rehabilitation of the blind, handicapped or deaf as
4 reputable and competent to provide dogs with training, and who is
5 actually involved in the training process.

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

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

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

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

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

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

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

46 bb. "Tay-Sachs trait" means the presence of the Tay-Sachs gene

1 which in combination with another similar gene results in the chronic
2 hereditary disease Tay-Sachs.

3 cc. "Cystic fibrosis trait" means the presence of the cystic fibrosis
4 gene which in combination with another similar gene results in the
5 chronic hereditary disease cystic fibrosis.

6 dd. "Service dog" means any dog individually trained to a
7 handicapped person's requirements including, but not limited to
8 minimal protection work, rescue work, pulling a wheelchair or
9 retrieving dropped items.

10 ee. "Qualified Medicaid applicant" means an individual who is a
11 qualified applicant pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.).

12 ff. "AIDS" means acquired immune deficiency syndrome as defined
13 by the Centers for Disease Control of the United States Public Health
14 Service.

15 gg. "HIV infection" means infection with the human
16 immunodeficiency virus or any other related virus identified as a
17 probable causative agent of AIDS.

18 hh. "Affectional or sexual orientation" means male or female
19 heterosexuality, homosexuality or bisexuality by inclination, practice,
20 identity or expression, having a history thereof or being perceived,
21 presumed or identified by others as having such an orientation.

22 ii. "Heterosexuality" means affectional, emotional or physical
23 attraction or behavior which is primarily directed towards persons of
24 the other gender.

25 jj. "Homosexuality" means affectional, emotional or physical
26 attraction or behavior which is primarily directed towards persons of
27 the same gender.

28 kk. "Bisexuality" means affectional, emotional or physical
29 attraction or behavior which is directed towards persons of either
30 gender.

31 ll. "Familial status" means being the natural parent of a child, the
32 adoptive parent of a child, the foster parent of a child, having a "parent
33 and child relationship" with a child as defined by State law, or having
34 sole or joint legal or physical custody, care, guardianship, or visitation
35 with a child, or any person who is pregnant or is in the process of
36 securing legal custody of any individual who has not attained the age
37 of 18 years.

38 mm. "Housing for older persons" means housing:

39 (1) provided under any State or federal program that the Attorney
40 General determines is specifically designed and operated to assist
41 elderly persons (as defined in the State or federal program); or

42 (2) intended for, and solely occupied by persons 62 years of age or
43 older; or

44 (3) intended and operated for occupancy by at least one person 55
45 years of age or older per unit. In determining whether housing
46 qualifies as housing for older persons under this subsection, the

1 Attorney General shall adopt regulations which require at least the
2 following factors:

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

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

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

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

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

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

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

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

32

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (3) To print, publish, circulate, issue, display, post or mail, or
33 cause to be printed, published, circulated, issued, displayed, posted or
34 mailed any statement, advertisement, publication or sign, or to use any
35 form of application for the purchase, rental, lease, assignment or
36 sublease of any real property or part or portion thereof, or to make
37 any record or inquiry in connection with the prospective purchase,
38 rental, lease, assignment, or sublease of any real property, or part or
39 portion thereof which expresses, directly or indirectly, any limitation,
40 specification or discrimination as to race, creed, color, national origin,
41 ancestry, marital status, sex, affectional or sexual orientation, familial
42 status or nationality, or any intent to make any such limitation,
43 specification or discrimination, and the production of any such
44 statement, advertisement, publicity, sign, form of application, record,
45 or inquiry purporting to be made by any such person shall be
46 presumptive evidence in any action that the same was authorized by

1 such person; provided, however, that nothing contained in this
2 subsection shall be construed to bar any person from refusing to sell,
3 rent, lease, assign or sublease or from advertising or recording a
4 qualification as to sex for any room, apartment, flat in a dwelling or
5 residential facility which is planned exclusively for and occupied by
6 individuals of one sex to any individual of the exclusively opposite sex
7 on the basis of sex.

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

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

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

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

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

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

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

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

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

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

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

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

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

21 m. For any person to:

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

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

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

45 n. For any person to aid, abet, incite, compel, coerce, or induce the
46 doing of any act forbidden by subsections l. and m. of section 11 of

1 P.L.1945, c.169 (C.10:5-12), or to attempt, or to conspire to do so.
2 Such prohibited conduct shall include, but not be limited to:

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

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

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

18

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

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

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

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

30 d. To determine the identity of deceased individuals;

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

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

34

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

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

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

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

44 (3) Retention is authorized by order of a court of competent
45 jurisdiction; or

46 (4) Retention is made pursuant to the provisions of the "DNA

1 Database and Databank Act of 1994," P.L.1994, c.136 (C.53:1-20.17
2 et seq.).

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

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

9 (2) Retention is authorized by order of a court of competent
10 jurisdiction.

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

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

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

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

28

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

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

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

40 (3) Disclosure is authorized by order of a court of competent
41 jurisdiction;

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

45 (5) Disclosure is authorized by the tested individual or the tested
46 individual's representative by signing a consent which complies with

1 the requirements of the Department of Health;

2 (6) Disclosure is for the purpose of furnishing genetic information
3 relating to a decedent for medical diagnosis of blood relatives of the
4 decedent;

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

6 (8) Disclosure is authorized by federal law for the identification of
7 persons.

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

11

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

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

24

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

29

30 10. This act shall take effect immediately.

31

32

33 *SPONSOR'S* STATEMENT

34

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

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

1 to determine a bona fide occupational qualification.

2 The bill prohibits life and health insurers from discriminating against
3 any person on the basis of genetic information or the refusal to submit
4 to a genetic test or make available the results of a genetic test to the
5 insurer, in the issuance, withholding, extension or renewal of any life or
6 health insurance policy or annuity, or in the fixing of rates, terms or
7 conditions of a life or health insurance policy, or in the issuance or
8 acceptance of any life or health insurance application.

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

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

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

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

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

36

37

38

39

40 The "Genetic Privacy Act."

SENATE HEALTH COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, Nos. 695 and 854**

STATE OF NEW JERSEY

DATED: MARCH 14, 1996

The Senate Health Committee reports favorably a committee substitute for Senate Bill Nos. 695 and 859.

This committee substitute, the "Genetic Privacy Act," provides a comprehensive statutory framework for the regulation of genetic testing and the retention and disclosure of information obtained from genetic tests. The substitute provides protection from unauthorized genetic testing, the unauthorized use of genetic information, and from insurance and employment discrimination against individuals on the basis of genetic information.

The substitute prohibits all health insurers offering comprehensive health benefits plans in the State from excluding any eligible person or dependent in the issuance, withholding, extension or renewal of health insurance coverage and from establishing any rates or terms on the basis of an actual or expected health condition or on the basis of any genetic characteristics.

With respect to hospital confinement or other supplemental limited benefit health or credit life or credit accident insurance coverage, the substitute prohibits discrimination against any individual on the basis of genetic information or the refusal to submit to a genetic test or make available the results of a genetic test to the person in the issuance, withholding, extension or renewal of the coverage or in the fixing of the rates, terms or conditions therefor, or in the issuance or acceptance of any application therefor.

With respect to life and disability income insurance and annuities, the substitute prohibits any unfair discrimination against any individual in the application of the results of a genetic test or genetic information to underwriting or in determining insurability. (The application of the results of a genetic test or genetic information, if any, must be reasonably related to anticipated claims experience.) The substitute provides that if the Commissioner of Insurance determines that such unfair discrimination has occurred, the commissioner shall issue an order requiring the insurer to cease and desist from engaging in the discriminatory act or practice and may assess monetary penalties against the insurer.

Also the substitute provides that if a life, disability income or

annuity insurer intends to apply the results of a genetic test to its underwriting or in determining insurability for a policy or contract, the insurer shall notify the individual who is the subject of the genetic test that such a test shall be required and shall obtain the individual's written informed consent for the test prior to the administration of the test. The insurer shall also provide that the physician or other health care professional designated by the individual shall promptly receive a copy of the results of the test and, if required, an interpretation of the test results by a qualified professional and that the individual shall state in writing whether the individual elects to be informed of the results of the test.

With respect to employment discrimination, the substitute amends New Jersey's "Law Against Discrimination" to make it an unlawful employment practice for an employer to refuse to hire or refuse to employ a person or to discharge or require a person to retire on the basis of genetic information or because of the refusal to submit to a genetic test or make available the results of a genetic test to an employer.

The substitute defines "genetic characteristic" to mean any inherited gene or chromosome, or alteration thereof, that is scientifically or medically believed to predispose an individual to a disease, disorder or syndrome, or to be associated with a statistically significant increased risk of development of a disease, disorder or syndrome. "Genetic information" is defined as the information about genes, gene products or inherited characteristics that may derive from an individual or family member. "Genetic test" is defined as a test for determining the presence or absence of an inherited genetic characteristic in an individual, including tests of nucleic acids such as DNA, RNA and mitochondrial DNA, chromosomes or proteins in order to identify a predisposing genetic characteristic.

The substitute provides standards and procedures for obtaining, retaining and disclosing genetic information. The substitute:

- declares that an individual's genetic information is the property of that individual, and prohibits any person from retaining an individual's genetic information without first obtaining specific authorization from the individual or the individual's representative, except under certain limited circumstances;

- requires that the DNA sample of an individual from which genetic information has been obtained shall be destroyed promptly upon the specific request of the individual, except under certain circumstances and for certain purposes;

- provides that no person may disclose or be compelled to disclose the identity of an individual upon whom a genetic test has been performed or to disclose genetic information about the individual in a manner that permits identification of the individual, except under certain limited circumstances; and

- requires any person who performs genetic testing or receives genetic testing records to provide the person tested with notice that

the test was performed or that the information was received.

Finally, the substitute provides that any person violating its provisions shall be a disorderly person and shall be punished by a fine of \$1,000, a prison term of six months, or both. Any person who willfully discloses an individual's genetic information to any third party in violation of the substitute's provisions shall be punished by a fine of \$5,000, a prison term of one year, or both. Any person who discloses an individual's genetic information in violation of the substitute's provisions shall be liable to the individual for all actual damages, including damages for economic, bodily, or emotional harm which is proximately caused by the disclosure.



OFFICE OF THE GOVERNOR NEWS RELEASE

CN-004

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TRENTON, NJ 08625

RELEASE: Tuesday,
Nov. 19, 1996

Governor Christie Whitman today signed legislation that regulates genetic testing and the retention and disclosure of information obtained from such tests.

“This legislation strikes an important balance between protecting privacy and preventing discrimination, while ensuring that scientific and medical research are not unduly inhibited or burdened,” said Governor Whitman.

The Genetic Privacy Act protects individuals seeking insurance coverage and employees from unauthorized genetic testing, unauthorized use of genetic testing information, and insurance and employment discrimination based on genetic information.

In September, the Governor conditionally vetoed the original legislation. The amended bill deletes the provision that makes a person’s genetic information his or her property as it would discourage research.

In addition, it permits the Commissioner of Health and Senior Services to adopt federal guidelines when devising the rules on informed consent with the regard to the disclosure of genetic information.

The bill also imposes criminal and civil sanctions for those who violate the provisions of the bill.

SCS-695/854 and A-1499/1411, sponsored by Senators Jack Sinagra (R-Middlesex), John Matheussen (R-Camden/Gloucester) and John Bennett (R-Monmouth), and Assembly Members Rose Marie Heck (R-Bergen), Joseph Doria (D-Hudson), and Patrick Roma and Paul DiGaetano both from (R-Bergen/Essex/Passaic).

SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NOS. 695 AND 854

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Committee Substitute for Senate Bill Nos. 695 and 854 with my recommendations for reconsideration.

A. Summary of the Bill

This bill, the Genetic Privacy Act, regulates genetic testing and the retention and disclosure of information obtained from genetic tests. The bill provides protection from insurance and employment discrimination on the basis of genetic information and from unauthorized genetic testing and the unauthorized use of genetic information.

The bill prohibits issuers of life insurance, annuities, or disability income insurance contracts from discriminating unfairly against insureds with regard to genetic information or to the insured's refusal to submit to a genetic test or to make available the results of a genetic test. It also requires that a life, disability-income, or annuity insurer that intends to apply the results of a genetic test to its underwriting or its determination of insurability must notify the subject of the genetic test that he or she may designate a physician or other health care professional to receive a copy of the test results and, if required, an interpretation of the results by a qualified professional. The person must state in writing whether he or she chooses to be given the test results.

The bill amends the Law Against Discrimination to make it an unlawful employment practice for an employer either to refuse to hire or to discharge a person on the basis of genetic information or because of the person's refusal to submit to a genetic test or to make available the results of a genetic test to an employer.

The bill declares that a person's genetic information is that person's property. It also provides standards and procedures for

obtaining, retaining, and disclosing genetic information, and specifies when genetic samples and DNA samples may be retained or must be destroyed.

The bill provides penalties for unauthorized and improper disclosure of genetic information.

B. Recommended Action

I commend the Legislature for passing this important legislation. Remarkable technological advances in the field of genetics have given us access to new information that will prove invaluable in assessing the risk of developing various diseases. As genetic testing becomes more widespread, however, so does the danger that the information will be used improperly to harm the very people it is intended to help. This bill is designed to avoid that danger by clarifying privacy rights and prohibiting discrimination based on information obtained through genetic testing. These are important goals, and I salute the Legislature for addressing them in such a timely and comprehensive fashion.

I am concerned, however, that the bill as drafted will result in unintended and harmful consequences. Specifically, the establishment of a new property right is a fundamental change from current practice that will have unintended but troubling consequences for research. A property right in genetic information is not needed to effectuate the bill's main purposes of protecting privacy and preventing discrimination. The provision may burden and eventually inhibit research, and it may cause some researchers to stop conducting clinical trials in New Jersey.

One consequence of creating a property right in genetic information is that a person could assert that right to seek royalties if genetic information from his or her tissue was used in the research that led to the development of drugs, diagnostic tests, or patents. Although participants in clinical trials and research are free to negotiate the terms of their participation in a study, including terms of compensation, the creation of a new statutory property right could lead to a proliferation of litigation in New

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Jersey -- litigation that could have a chilling effect on scientific research. I am also advised that creating a property right would impose a de facto requirement that researchers notify anyone whose genetic information was used or is intended to be used in the course of research. That would further burden research, especially in cases where research is based on data from a stored sample. For researchers who use encrypted data, notification would actually have the effect of lessening the privacy protections that encryption provides.

In short, creating a property right could result in complicated social, legal, and policy consequences -- including some that no one can foresee at this time. Rather than create a new right that is not necessary to further the bill's goals and has the potential to create a wide range of problems, I propose deleting it from the bill.

In addition, the Commissioner of Health and Senior Services advises that the bill's informed consent guidelines may impede research and clinical trials because they do not take into account federal guidelines that researchers widely follow. I therefore propose to amend the bill to permit the Commissioner of Health and Senior Services to adopt federal guidelines when promulgating rules on informed consent.

In addition to addressing issues related to the property right and informed consent, I propose to amend the bill to eliminate disparate treatment of insurance companies. The Commissioner of Banking and Insurance advises me that in its current form the bill establishes separate standards for various types of insurance. To prevent any confusion that might undermine the effectiveness of those standards, I recommend that the unfair-discrimination standard in the bill, which applies to issuers of life insurance, annuities, and disability income insurance contracts, also apply to issuers of credit life insurance and credit accident insurance.

In summary, I recommend that the bill be amended as follows:

1. Delete the section of the bill that creates a property right in genetic information.

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2. Permit the Commissioner of Health and Senior Services to adopt federal guidelines when promulgating rules on informed consent.
3. Amend the provision regarding the duty to provide notice to the tested person that genetic testing was performed. The bill requires any person who performs genetic testing to provide such notice. I recommend that the bill be amended to impose that requirement on a person who requires or requests the testing. That will ensure that the requirement falls only on an insurance company or employer who requests testing, not on a researcher or research laboratory.
4. Apply the unfair-discrimination standard to issuers of credit life insurance and credit accident insurance, in addition to issuers of life insurance, annuities, and disability income insurance contracts.

Therefore, I herewith return Senate Committee Substitute for Senate Bill Nos. 695 and 854 and recommend that it be amended as follows:

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| <u>Page 2, Section 3, Line 35:</u> | Delete "health or credit life or credit" |
| <u>Page 2, Section 3, Line 36:</u> | Delete "accident" and "coverage" |
| <u>Page 3, Section 3, Line 9:</u> | After "in the" insert "issuance, withholding, extension or renewal of"; delete "underwriting of or determining insurability" |
| <u>Page 3, Section 3, Line 10:</u> | Delete "for"; after "insurance," insert "including credit life insurance,"; after "annuity" insert "," and delete "or" |
| <u>Page 3, Section 3, Line 11:</u> | After "contract" insert "or credit accident insurance coverage" |
| <u>Page 3, Section 3, Line 23:</u> | After "insurance," insert "including credit life insurance,"; after "annuity" insert "," and delete "or"; after "contract" insert "or credit accident insurance coverage" |

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- Page 16, Section 6, Line 39: After "representative" add "according to regulations promulgated by the Commissioner of Health and Senior Services, in consultation with the Commissioner of Banking and Insurance, pursuant to subsection b. of section 9 of P.L. , c. (now pending before the Legislature as this bill)"
- Page 17, Section 7, Line 13: Delete "An individual's genetic information is the"
- Page 17, Section 7, Line 14: Delete in its entirety.
- Page 17, Section 7, Line 15: Delete "b."
- Page 17, Section 7, Line 16: After "authorization" insert "under the informed consent requirement of section 6 of P.L. , c. (now pending before the Legislature as this bill)"
- Page 17, Section 7, Line 23: Delete "or"
- Page 17, Section 7, Line 26: Delete "." insert "; or (5) Retention of information is for anonymous research where the identity of the subject will not be released."
- Page 17, Section 7, Line 27: Delete "c." insert "b."
- Page 17, Section 7, Line 35: Delete "d." insert "c."
- Page 17, Section 7, Line 40: Delete "e." insert "d."
- Page 17, Section 7, Line 44: Delete "f." insert "e."
- Page 17, Section 7, Line 46: After "individual" insert "unless the individual directs otherwise by informed consent pursuant to section 6 of P.L. , c. (now pending before the Legislature as this bill)"
- Page 18, Section 7, Line 3: Delete "g." insert "f."
- Page 17, Section 8, Line 27: After "Health" insert "and Senior Services"
- Page 18, Section 9, Line 43: After "person" insert "who requires or requests"; delete "performs"
- Page 18, Section 9, Line 43: After "testing" insert "be done"
- Page 18, Section 9, Line 45: After "performed" delete "or" and insert "and"
- Page 18, Section 9, Line 46: Delete "information was" and insert "records, results or findings were"
- Page 18, Section 9, Line 46: After "received" insert "unless otherwise directed by informed consent pursuant to section 6 of

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P.L. , C. (now pending
before the Legislature as this
bill)"

Page 19, Section 9, Line 5:

After "Health" insert "and Senior
Services, in consultation with the
Commissioner of Banking and
Insurance,"

Page 19, Section 9, Line 9:

Delete "which shall include a
description of" insert "except
where the procedures for obtaining
informed written consent already
are governed by national standards
for informed consent as designated
by the Commissioner of Health and
Senior Services by regulation,
which may include but need not be
limited to guidelines from the
Office of Protection for Research
Risk, the Food and Drug
Administration or other
appropriate federal agencies."

Page 19, Section 9, Lines 10-13:

Delete in their entirety.

Respectfully,

/s/ Christine Todd Whitman

GOVERNOR

[seal]

Attest:

/s/ Michael P. Torpey

Chief Counsel to the Governor