

House of Representatives, March 30, 1998. The Committee on Judiciary reported through REP. LAWLOR, 99th DIST., Chairman of the Committee on the part of the House, that the bill ought to pass.

AN ACT CONCERNING GENETIC INFORMATION AND EMPLOYMENT DISCRIMINATION.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Subsection (a) of section 46a-60 of the
2 general statutes is repealed and the following is
3 substituted in lieu thereof:

4 (a) It shall be a discriminatory practice in
5 violation of this section:

6 (1) For an employer, by himself or his agent,
7 except in the case of a bona fide occupational
8 qualification or need, to refuse to hire or employ
9 or to bar or to discharge from employment any
10 individual or to discriminate against him in
11 compensation or in terms, conditions or privileges
12 of employment because of the individual's race,
13 color, religious creed, age, sex, marital status,
14 national origin, ancestry, present or past history
15 of mental disorder, mental retardation, learning
16 disability or physical disability, including, but
17 not limited to, blindness;

18 (2) For any employment agency, except in the
19 case of a bona fide occupational qualification or
20 need, to fail or refuse to classify properly or
21 refer for employment or otherwise to discriminate
22 against any individual because of his race, color,

23 religious creed, age, sex, marital status,
24 national origin, ancestry, present or past history
25 of mental disorder, mental retardation, learning
26 disability or physical disability, including, but
27 not limited to, blindness;

28 (3) For a labor organization, because of the
29 race, color, religious creed, age, sex, marital
30 status, national origin, ancestry, present or past
31 history of mental disorder, mental retardation,
32 learning disability or physical disability,
33 including, but not limited to, blindness of any
34 individual to exclude from full membership rights
35 or to expel from its membership such individual or
36 to discriminate in any way against any of its
37 members or against any employer or any individual
38 employed by an employer, unless such action is
39 based on a bona fide occupational qualification;

40 (4) For any person, employer, labor
41 organization or employment agency to discharge,
42 expel or otherwise discriminate against any person
43 because he has opposed any discriminatory
44 employment practice or because he has filed a
45 complaint or testified or assisted in any
46 proceeding under section 46a-82, 46a-83 or 46a-84;

47 (5) For any person, whether an employer or an
48 employee or not, to aid, abet, incite, compel or
49 coerce the doing of any act declared to be a
50 discriminatory employment practice or to attempt
51 to do so;

52 (6) For any person, employer, employment
53 agency or labor organization, except in the case
54 of a bona fide occupational qualification or need,
55 to advertise employment opportunities in such a
56 manner as to restrict such employment so as to
57 discriminate against individuals because of their
58 race, color, religious creed, age, sex, marital
59 status, national origin, ancestry, present or past
60 history of mental disorder, mental retardation,
61 learning disability or physical disability,
62 including, but not limited to, blindness;

63 (7) For an employer, by himself or his agent:
64 (A) To terminate a woman's employment because of
65 her pregnancy; (B) to refuse to grant to that
66 employee a reasonable leave of absence for
67 disability resulting from her pregnancy; (C) to
68 deny to that employee, who is disabled as a result
69 of pregnancy, any compensation to which she is
70 entitled as a result of the accumulation of

71 disability or leave benefits accrued pursuant to
72 plans maintained by the employer; (D) to fail or
73 refuse to reinstate the employee to her original
74 job or to an equivalent position with equivalent
75 pay and accumulated seniority, retirement, fringe
76 benefits and other service credits upon her
77 signifying her intent to return unless, in the
78 case of a private employer, the employer's
79 circumstances have so changed as to make it
80 impossible or unreasonable to do so; (E) to fail
81 or refuse to make a reasonable effort to transfer
82 a pregnant employee to any suitable temporary
83 position which may be available in any case in
84 which an employee gives written notice of her
85 pregnancy to her employer and the employer or
86 pregnant employee reasonably believes that
87 continued employment in the position held by the
88 pregnant employee may cause injury to the employee
89 or fetus; (F) to fail or refuse to inform the
90 pregnant employee that a transfer pursuant to
91 subparagraph (E) of this subdivision may be
92 appealed under the provisions of this chapter; or
93 (G) to fail or refuse to inform his employees, by
94 any reasonable means, that they must give written
95 notice of their pregnancy in order to be eligible
96 for transfer to a temporary position;

97 (8) For an employer, by himself or his agent,
98 for an employment agency, by itself or its agent,
99 or for any labor organization, by itself or its
100 agent, to harass any employee, person seeking
101 employment or member on the basis of sex. "Sexual
102 harassment" shall, for the purposes of this
103 section, be defined as any unwelcome sexual
104 advances or requests for sexual favors or any
105 conduct of a sexual nature when (A) submission to
106 such conduct is made either explicitly or
107 implicitly a term or condition of an individual's
108 employment, (B) submission to or rejection of such
109 conduct by an individual is used as the basis for
110 employment decisions affecting such individual, or
111 (C) such conduct has the purpose or effect of
112 substantially interfering with an individual's
113 work performance or creating an intimidating,
114 hostile or offensive working environment;

115 (9) For an employer, by himself or his agent,
116 for an employment agency, by itself or its agent,
117 or for any labor organization, by itself or its
118 agent, to request or require information from an

119 employee, person seeking employment or member
120 relating to the individual's child bearing age or
121 plans, pregnancy, function of the individual's
122 reproductive system, use of birth control methods,
123 or the individual's familial responsibilities,
124 unless such information is directly related to a
125 bona fide occupational qualification or need,
126 provided an employer, through a physician may
127 request from an employee any such information
128 which is directly related to workplace exposure to
129 substances which may cause birth defects or
130 constitute a hazard to an individual's
131 reproductive system or to a fetus if the employer
132 first informs the employee of the hazards involved
133 in exposure to such substances;

134 (10) For an employer, by himself or his
135 agent, after informing an employee, pursuant to
136 subdivision (9) of this subsection, of a workplace
137 exposure to substances which may cause birth
138 defects or constitute a hazard to an employee's
139 reproductive system or to a fetus, to fail or
140 refuse, upon the employee's request, to take
141 reasonable measures to protect the employee from
142 the exposure or hazard identified, or to fail or
143 refuse to inform the employee that the measures
144 taken may be the subject of a complaint filed
145 under the provisions of this chapter. Nothing in
146 this subdivision is intended to prohibit an
147 employer from taking reasonable measures to
148 protect an employee from exposure to such
149 substances. For the purpose of this subdivision,
150 "reasonable measures" shall be those measures
151 which are consistent with business necessity and
152 are least disruptive of the terms and conditions
153 of the employee's employment;

154 (11) FOR AN EMPLOYER, BY HIMSELF OR HIS
155 AGENT, FOR AN EMPLOYMENT AGENCY, BY ITSELF OR ITS
156 AGENT, OR FOR ANY LABOR ORGANIZATION, BY ITSELF OR
157 ITS AGENT: (A) TO REQUEST OR REQUIRE GENETIC
158 INFORMATION FROM AN EMPLOYEE, PERSON SEEKING
159 EMPLOYMENT OR MEMBER, OR (B) TO DISCHARGE, EXPEL
160 OR OTHERWISE DISCRIMINATE AGAINST ANY PERSON ON
161 THE BASIS OF GENETIC INFORMATION. "GENETIC
162 INFORMATION" MEANS THE INFORMATION ABOUT GENES,
163 GENE PRODUCTS OR INHERITED CHARACTERISTICS THAT
164 MAY DERIVE FROM AN INDIVIDUAL OR FAMILY MEMBER.

165 JUD COMMITTEE VOTE: YEA 33 NAY 2 JF

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"THE FOLLOWING FISCAL IMPACT STATEMENT AND BILL ANALYSIS ARE PREPARED FOR THE BENEFIT OF MEMBERS OF THE GENERAL ASSEMBLY, SOLELY FOR PURPOSES OF INFORMATION, SUMMARIZATION AND EXPLANATION AND DO NOT REPRESENT THE INTENT OF THE GENERAL ASSEMBLY OR EITHER HOUSE THEREOF FOR ANY PURPOSE."

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FISCAL IMPACT STATEMENT - BILL NUMBER HB 5471

STATE IMPACT	Potential Indeterminate Cost and Eliminates Future Year Cost Avoidance, see explanation below
MUNICIPAL IMPACT	Potential Indeterminate Cost and Eliminates Future Year Cost Avoidance, see explanation below
STATE AGENCY(S)	Department of Administrative Services (Human Resources), Commission on Human Rights and Opportunities

EXPLANATION OF ESTIMATES:

STATE AND MUNICIPAL IMPACT: The passage of this bill could result in additional costs to the State and municipalities that are indeterminate and would eliminate potential cost avoidance to the State and municipalities as employers in future years.

At the current time, neither the State nor municipalities obtain genetic information on their employees. To the extent that genetic information can successfully predict future medical or behavioral problems, its use could reduce future long-term health care costs and costs resulting from absenteeism. The scope of genetic testing is rapidly expanding, and the cost of the testing is rapidly declining. It is assumed that employers would not incur the costs of testing unless they anticipate that future savings and cost avoidance would result. Therefore, this would result in the elimination of potential cost avoidance in future years. The State and municipalities as employers could

incur potential costs to the extent that they are defendants in such actions.

It should also be noted that the use of genetic information in making employment decisions might be a violation of the federal Americans with Disabilities Act (ADA). At this time, no complaints of genetic discrimination have been filed under ADA.

There is an indeterminate workload increase for the Commission on Human Rights and Opportunities associated with handling cases where employers use genetic information to discharge, expel or otherwise discriminate against any person on the basis of genetic information. It is uncertain as to whether this workload increase can be handled within the anticipated resources of the Commission on Human Rights and Opportunities.

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OLR BILL ANALYSIS

HB 5471

AN ACT CONCERNING GENETIC INFORMATION AND EMPLOYMENT DISCRIMINATION

SUMMARY: This bill prohibits employers, employment agencies, labor organizations, and their agents from discriminating against (1) employees, people seeking employment, or members by asking or requiring them to provide genetic information or (2) anyone on the basis of such information, including by discharging or dispelling them. "Genetic information" is information about genes, gene products, or inherited characteristics that may derive from an individual or family member.

By law, the Commission on Human Rights and Opportunities (CHRO) can investigate complaints and order people who engage in discriminatory employment practices to cease and desist such practices, take affirmative steps to effectuate the purpose of the law prohibiting the practices, pay back pay, hire or reinstate employees, and restore memberships in organizations. If CHRO fails to act within 210 days

from the date a complaint is filed, the complainant may get a release and take the case to court. The court can order such legal and equitable relief as it deems appropriate, including injunctive relief, attorney's fees, and court costs.

EFFECTIVE DATE: October 1, 1998

BACKGROUND

Related Bill

sSB 80 (File 49) prohibits employers from asking for, getting, or disclosing genetic information; requiring or giving genetic tests for use in employment decisions; or offering pay or benefits in return for taking a genetic test. The bill does not include a penalty for violations, but it appears that under current law violations can be fined up to \$100 and anyone aggrieved may bring a negligence per se action.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Report
Yea 33 Nay 2