

**Introduced by Senator Johnston**

February 26, 1999

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An act to amend Section 56.17 of the Civil Code, to amend Section 12926 of the Government Code, to amend Section 1374.7 of the Health and Safety Code, and to amend Sections 10123.3 and 10147 of the Insurance Code, relating to genetic characteristics.

LEGISLATIVE COUNSEL'S DIGEST

SB 1185, as introduced, Johnston. Genetic characteristics: definition.

(1) Existing law prohibits discrimination in employment based on an individual's medical condition, which is defined to include genetic characteristics. Existing law also prohibits discrimination in the enrollment of health care service plans, self-insured employee welfare benefit plans, and life and disability income insurance plans on the basis of an individual's genetic characteristics, and defines "genetic characteristics" for these purposes.

This bill would recast and rephrase the definition of "genetic characteristics" for these purposes.

(2) Existing law imposes prohibitions on the disclosure of the results of a test for a genetic characteristic contained in an applicant or enrollee's medical records by a health care service plan.

This bill would specify that "genetic characteristic," as used in these prohibitions, has the same meaning as that set forth in the provisions governing discrimination in the enrollment of health care service plans.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 56.17 of the Civil Code is  
 2 amended to read:  
 3 56.17. (a) This section shall apply to the disclosure of  
 4 genetic test results contained in an applicant or enrollee’s  
 5 medical records by a health care service plan.  
 6 (b) Any person who negligently discloses results of a  
 7 test for a genetic characteristic to any third party in a  
 8 manner that identifies or provides identifying  
 9 characteristics of the person to whom the test results  
 10 apply, except pursuant to a written authorization as  
 11 described in subdivision (g), shall be assessed a civil  
 12 penalty in an amount not to exceed one thousand dollars  
 13 (\$1,000) plus court costs, as determined by the court,  
 14 which penalty and costs shall be paid to the subject of the  
 15 test.  
 16 (c) Any person who willfully discloses the results of a  
 17 test for a genetic characteristic to any third party in a  
 18 manner that identifies or provides identifying  
 19 characteristics of the person to whom the test results  
 20 apply, except pursuant to a written authorization as  
 21 described in subdivision (g), shall be assessed a civil  
 22 penalty in an amount not less than one thousand dollars  
 23 (\$1,000) and no more than five thousand dollars (\$5,000)  
 24 plus court costs, as determined by the court, which  
 25 penalty and costs shall be paid to the subject of the test.  
 26 (d) Any person who willfully or negligently discloses  
 27 the results of a test for a genetic characteristic to a third  
 28 party in a manner that identifies or provides identifying  
 29 characteristics of the person to whom the test results  
 30 apply, except pursuant to a written authorization as  
 31 described in subdivision (g), that results in economic,  
 32 bodily, or emotional harm to the subject of the test, is  
 33 guilty of a misdemeanor punishable by a fine not to  
 34 exceed ten thousand dollars (\$10,000).



1 (e) In addition to the penalties listed in subdivisions  
2 (b) and (c), any person who commits any act described  
3 in subdivision (b) or (c) shall be liable to the subject for  
4 all actual damages, including damages for economic,  
5 bodily, or emotional harm which is proximately caused by  
6 the act.

7 (f) Each disclosure made in violation of this section is  
8 a separate and actionable offense.

9 (g) The applicant's "written authorization," as used in  
10 this section, shall satisfy the following requirements:

11 (1) Is written in plain language.

12 (2) Is dated and signed by the individual or a person  
13 authorized to act on behalf of the individual.

14 (3) Specifies the types of persons authorized to  
15 disclose information about the individual.

16 (4) Specifies the nature of the information authorized  
17 to be disclosed.

18 (5) States the name or functions of the persons or  
19 entities authorized to receive the information.

20 (6) Specifies the purposes for which the information is  
21 collected.

22 (7) Specifies the length of time the authorization shall  
23 remain valid.

24 (8) Advises the person signing the authorization of the  
25 right to receive a copy of the authorization. Written  
26 authorization is required for each separate disclosure of  
27 the test results.

28 (h) This section shall not apply to disclosures required  
29 by the Department of Health Services necessary to  
30 monitor compliance with Chapter 1 (commencing with  
31 Section 124975) of Part 5 of Division 106 of the Health and  
32 Safety Code, nor to disclosures required by the  
33 Department of Corporations necessary to administer and  
34 enforce compliance with Section 1374.7 of the Health and  
35 Safety Code.

36 (i) *For purposes of this section, "genetic*  
37 *characteristic" has the same meaning as that set forth in*  
38 *subdivision (d) of Section 1374.7 of the Health and Safety*  
39 *Code.*



1 SEC. 2. Section 12926 of the Government Code is  
2 amended to read:

3 12926. As used in this part in connection with  
4 unlawful practices, unless a different meaning clearly  
5 appears from the context:

6 (a) “Affirmative relief” or “prospective relief”  
7 includes the authority to order reinstatement of an  
8 employee, awards of backpay, reimbursement of  
9 out-of-pocket expenses, hiring, transfers, reassignments,  
10 grants of tenure, promotions, cease and desist orders,  
11 posting of notices, training of personnel, testing,  
12 expunging of records, reporting of records, and any other  
13 similar relief that is intended to correct unlawful  
14 practices under this part.

15 (b) “Age” refers to the chronological age of any  
16 individual who has reached his or her 40th birthday.

17 (c) “Employee” does not include any individual  
18 employed by his or her parents, spouse, or child, or any  
19 individual employed under a special license in a nonprofit  
20 sheltered workshop or rehabilitation facility.

21 (d) “Employer” includes any person regularly  
22 employing five or more persons, or any person acting as  
23 an agent of an employer, directly or indirectly, the state  
24 or any political or civil subdivision thereof, and cities,  
25 except as follows:

26 (1) “Employer” does not include a religious  
27 association or corporation not organized for private  
28 profit.

29 (2) “Employer,” for purposes of provisions defining  
30 unlawful employment practices related to mental  
31 disability, means any person regularly employing 15 or  
32 more persons, or any person directly or indirectly acting  
33 as an agent of such an employer, and also includes the  
34 state and municipalities and political subdivisions of the  
35 state.

36 (e) “Employment agency” includes any person  
37 undertaking for compensation to procure employees or  
38 opportunities to work.

39 (f) “Essential functions” means the fundamental job  
40 duties of the employment position the individual with a



1 disability holds or desires. “Essential functions” does not  
2 include the marginal functions of the position.

3 (1) A job function may be considered essential for any  
4 of several reasons, including, but not limited to, any one  
5 or more of the following:

6 (A) The function may be essential because the reason  
7 the position exists is to perform that function.

8 (B) The function may be essential because of the  
9 limited number of employees available among whom the  
10 performance of that job function can be distributed.

11 (C) The function may be highly specialized, so that the  
12 incumbent in the position is hired for his or her expertise  
13 or ability to perform the particular function.

14 (2) Evidence of whether a particular function is  
15 essential includes, but is not limited to, the following:

16 (A) The employer’s judgment as to which functions  
17 are essential.

18 (B) Written job descriptions prepared before  
19 advertising or interviewing applicants for the job.

20 (C) The amount of time spent on the job performing  
21 the function.

22 (D) The consequences of not requiring the incumbent  
23 to perform the function.

24 (E) The terms of a collective bargaining agreement.

25 (F) The work experiences of past incumbents in the  
26 job.

27 (G) The current work experience of incumbents in  
28 similar jobs.

29 (g) “Labor organization” includes any organization  
30 that exists and is constituted for the purpose, in whole or  
31 in part, of collective bargaining or of dealing with  
32 employers concerning grievances, terms or conditions of  
33 employment, or of other mutual aid or protection.

34 (h) “Medical condition” includes ~~(1) genetic~~  
35 ~~characteristics, or (2) any~~ *both of the following:*

36 (1) Any health impairment related to or associated  
37 with a diagnosis of cancer, for which a person has been  
38 rehabilitated or cured, based on competent medical  
39 ~~evidence.~~ *For evidence.*



1 (2) *Genetic characteristics.* For purposes of this  
2 section, “genetic characteristics” means ~~any~~ *either of the*  
3 *following:*

4 (A) *Any* scientifically or medically identifiable gene or  
5 chromosome, or combination or alteration thereof, that  
6 is known to be a cause of a disease or disorder in a person  
7 or his or her offspring, or *that* is determined to be  
8 associated with a statistically increased risk of  
9 development of a disease or disorder, ~~or inherited~~ *and*  
10 *that is presently not associated with any symptoms of any*  
11 *disease or disorder.*

12 (B) *Inherited* characteristics that may derive from the  
13 individual or family member, *and that is* ~~are~~ *presently not*  
14 *associated with any symptoms of any disease or disorder.*

15 (i) “Mental disability” includes any mental or  
16 psychological disorder, such as mental retardation,  
17 organic brain syndrome, emotional or mental illness, and  
18 specific learning disabilities. However, “mental  
19 disability” does not include conditions excluded from the  
20 federal definition of “disability” pursuant to Section 511  
21 of the Americans with Disabilities Act of 1990 (42 U.S.C.,  
22 Sec. 12211). Additionally, for purposes of this part, the  
23 unlawful use of controlled substances or other drugs shall  
24 not be deemed, in and of itself, to constitute a mental  
25 disability.

26 (j) “On the bases enumerated in this part” means or  
27 refers to discrimination on the basis of one or more of the  
28 following: race, religious creed, color, national origin,  
29 ancestry, physical disability, mental disability, medical  
30 condition, marital status, sex, or age.

31 (k) “Physical disability” includes, but is not limited to,  
32 all of the following:

33 (1) Having any physiological disease, disorder,  
34 condition, cosmetic disfigurement, or anatomical loss that  
35 does both of the following:

36 (A) Affects one or more of the following body systems:  
37 neurological, immunological, musculoskeletal, special  
38 sense organs, respiratory, including speech organs,  
39 cardiovascular, reproductive, digestive, genitourinary,  
40 hemic and lymphatic, skin, and endocrine.



1 (B) Limits an individual's ability to participate in  
2 major life activities.

3 (2) Any other health impairment not described in  
4 paragraph (1) that requires special education or related  
5 services.

6 (3) Being regarded as having or having had a disease,  
7 disorder, condition, cosmetic disfigurement, anatomical  
8 loss, or health impairment described in paragraph (1) or  
9 (2).

10 (4) Being regarded as having, or having had, a disease,  
11 disorder, condition, cosmetic disfigurement, anatomical  
12 loss, or health impairment that has no present disabling  
13 effect but may become a physical disability as described  
14 in paragraph (1) or (2).

15 It is the intent of the Legislature that the definition of  
16 "physical disability" in this subdivision shall have the  
17 same meaning as the term "physical handicap" formerly  
18 defined by this subdivision and construed in American  
19 National Ins. Co. v. Fair Employment & Housing Com.,  
20 32 Cal.3d 603. However, "physical disability" does not  
21 include conditions excluded from the federal definition of  
22 "disability" pursuant to Section 511 of the Americans with  
23 Disabilities Act of 1990 (42 U.S.C., Sec. 12211).  
24 Additionally, for purposes of this part, the unlawful use of  
25 controlled substances or other drugs shall not be deemed,  
26 in and of itself, to constitute a physical disability.

27 (I) Notwithstanding subdivisions (i) and (k), if the  
28 definition of "disability" used in the Americans with  
29 Disabilities Act of 1990 (Public Law 101-336) would result  
30 in broader protection of the civil rights of individuals with  
31 a mental disability or physical disability, as defined in  
32 subdivision (i) or (k), or would include any medical  
33 condition not included within those definitions, then that  
34 broader protection or coverage shall be deemed  
35 incorporated by reference into, and shall prevail over  
36 conflicting provisions of, the definitions in subdivisions  
37 (i) and (k).

38 (m) "Reasonable accommodation" may include either  
39 of the following:



1 (1) Making existing facilities used by employees  
2 readily accessible to, and usable by, individuals with  
3 disabilities.

4 (2) Job restructuring, part-time or modified work  
5 schedules, reassignment to a vacant position, acquisition  
6 or modification of equipment or devices, adjustment or  
7 modifications of examinations, training materials or  
8 policies, the provision of qualified readers or interpreters,  
9 and other similar accommodations for individuals with  
10 disabilities.

11 (n) “Religious creed,” “religion,” “religious  
12 observance,” “religious belief,” and “creed” include all  
13 aspects of religious belief, observance, and practice.

14 (o) “Sex” includes, but is not limited to, pregnancy,  
15 childbirth, or medical conditions related to pregnancy or  
16 childbirth.

17 (p) “Undue hardship” means an action requiring  
18 significant difficulty or expense, when considered in light  
19 of the following factors: (1) the nature and cost of the  
20 accommodation needed, (2) the overall financial  
21 resources of the facilities involved in the provision of the  
22 reasonable accommodations, the number of persons  
23 employed at the facility, and the effect on expenses and  
24 resources or the impact otherwise of these  
25 accommodations upon the operation of the facility, (3)  
26 the overall financial resources of the covered entity, the  
27 overall size of the business of a covered entity with  
28 respect to the number of employees, and the number,  
29 type, and location of its facilities, (4) the type of  
30 operations, including the composition, structure, and  
31 functions of the work force of the entity, and (5) the  
32 geographic separateness, administrative, or fiscal  
33 relationship of the facility or facilities.

34 SEC. 3. Section 1374.7 of the Health and Safety Code  
35 is amended to read:

36 1374.7. (a) No plan shall refuse to enroll any person  
37 or accept any person as a subscriber or renew any person  
38 as a subscriber after appropriate application on the basis  
39 of a person’s genetic characteristics that may, under some  
40 circumstances, be associated with disability in that person



1 or that person's offspring. No plan shall require a higher  
2 rate or charge, or offer or provide different terms,  
3 conditions, or benefits, on the basis of a person's genetic  
4 characteristics that may, under some circumstances, be  
5 associated with disability in that person or that person's  
6 offspring.

7 (b) No plan shall seek information about a person's  
8 genetic characteristics for any nontherapeutic purpose.

9 (c) No discrimination shall be made in the fees or  
10 commissions of a solicitor or solicitor firm for an  
11 enrollment or a subscription or the renewal of an  
12 enrollment or subscription of any person on the basis of  
13 a person's genetic characteristics that may, under some  
14 circumstances, be associated with disability in that person  
15 or that person's offspring.

16 (d) "Genetic characteristics" as used in this section  
17 means ~~any~~ *either of the following*:

18 (1) Any scientifically or medically identifiable gene or  
19 chromosome, or combination or alteration thereof, that  
20 is known to be a cause of a disease or disorder in a person  
21 or his or her offspring, or that is determined to be  
22 associated with a statistically increased risk of  
23 development of a disease or disorder, ~~or inherited and~~  
24 *that is presently not associated with any symptoms of any*  
25 *disease or disorder.*

26 (2) *Inherited* characteristics that may derive from the  
27 individual or family member, *and that is are* presently not  
28 associated with any symptoms of any disease or disorder.

29 SEC. 4. Section 10123.3 of the Insurance Code is  
30 amended to read:

31 10123.3. (a) No self-insured employee welfare  
32 benefit plan shall refuse to enroll any person or accept  
33 any person as a subscriber or renew any person as a  
34 subscriber after appropriate application on the basis of a  
35 person's genetic characteristics that may, under some  
36 circumstances, be associated with disability in that person  
37 or that person's offspring. No plan shall require a higher  
38 rate or charge, or offer or provide different terms,  
39 conditions, or benefits, on the basis of a person's genetic  
40 characteristics that may, under some circumstances, be



1 associated with disability in that person or that person's  
2 offspring than is at the time required of any other  
3 individual in an otherwise identical classification, nor  
4 shall any plan make or require any rebate, discrimination,  
5 or discount upon the amount to be paid or the service to  
6 be rendered under the plan because the person carries  
7 those traits.

8 (b) No self-insured employee welfare benefit plan  
9 shall seek information about a person's genetic  
10 characteristics for any nontherapeutic purpose.

11 (c) No discrimination shall be made in the fees or  
12 commissions of a solicitor or solicitor firm for an  
13 enrollment or a subscription or the renewal of an  
14 enrollment or subscription of any person on the basis of  
15 a person's genetic characteristics that may, under some  
16 circumstances, be associated with disability in that person  
17 or that person's offspring.

18 (d) "Genetic characteristics" as used in this section  
19 means ~~any~~ *either of the following*:

20 (1) *Any* scientifically or medically identifiable gene or  
21 chromosome, or combination or alteration thereof, that  
22 is known to be a cause of a disease or disorder in a person  
23 or his or her offspring, or that is determined to be  
24 associated with a statistically increased risk of  
25 development of a disease or disorder, ~~or inherited~~ *and*  
26 *that is presently not associated with any symptoms of any*  
27 *disease or disorder.*

28 (2) *Inherited* characteristics that may derive from the  
29 individual or family member, *and* that ~~is~~ *are* presently not  
30 associated with any symptoms of any disease or disorder.

31 SEC. 5. Section 10147 of the Insurance Code is  
32 amended to read:

33 10147. As used in this article:

34 (a) "Disability income insurance" means insurance  
35 against loss of occupational earning capacity arising from  
36 injury, sickness, or disablement, and includes insurance  
37 which provides benefits for overhead expenses of a  
38 business or profession when the insured becomes  
39 disabled.



1 (b) “Genetic characteristics” means any scientifically  
2 or medically identifiable gene or chromosome, or  
3 alteration thereof, ~~which~~ *that* is known to be a cause of a  
4 disease or disorder, or *that is* determined to be associated  
5 with a statistically increased risk of development of a  
6 disease or disorder, *and* that is presently not associated  
7 with any symptoms of any disease or disorder.

8 (c) “Life or disability income insurer” means an  
9 insurer licensed to transact life insurance or disability  
10 income insurance in this state or a fraternal benefit  
11 society licensed in this state.

12 (d) “Policy” means (1) a life insurance policy or a  
13 disability income insurance policy delivered in this state,  
14 or (2) a certificate of life insurance benefits or disability  
15 income insurance benefits, issued under a group life or  
16 disability income insurance policy and delivered in this  
17 state by a life or disability income insurer or a fraternal  
18 benefits society, regardless of the location of the group  
19 master policy.

20 (e) “Test of a person’s genetic characteristics” means  
21 a laboratory test which is generally accepted in the  
22 scientific and medical communities for the  
23 determination of the presence or absence of genetic  
24 characteristics.

