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SENATE BILL 205

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

Cisco McSorley

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO EMPLOYMENT; ENACTING THE UNIFORM PROTECTION OF  
GENETIC INFORMATION IN EMPLOYMENT ACT; AMENDING THE GENETIC  
INFORMATION PRIVACY ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1.** [NEW MATERIAL] SHORT TITLE.--Sections 1  
through 26 of this act may be cited as the "Uniform Protection  
of Genetic Information in Employment Act".

**SECTION 2.** [NEW MATERIAL] DEFINITIONS.--As used in the  
Uniform Protection of Genetic Information in Employment Act:

A. "credentialing authority" means a person who  
provides a license, registration or credential or certifies  
competence necessary for an individual to qualify for  
employment or to participate in an occupation or profession;

B. "DNA" means deoxyribonucleic acid;

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C. "employee":

(1) means:

(a) an individual who is employed, was formerly employed or is applying for employment with a person who has five or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year;

(b) an individual who uses, formerly used or is applying to use the services of an employment agency;

(c) a labor organization member;

(d) an apprentice, trainee, former apprentice, former trainee or applicant for a training, retraining or apprenticeship program; or

(e) an individual or applicant considered by a credentialing authority; and

(2) does not include an independent contractor;

D. "employer" means a person, or an agent of a person, that employs an employee defined in Subparagraph (a) of Paragraph (1) of Subsection C of this section;

E. "employment agency" means a person, or an agent of a person, that regularly undertakes, with or without compensation, to procure one or more employees for an employer or to procure for one or more employees opportunities to work

1 for an employer;

2 F. "employment entity" means an employer,  
3 employment agency, labor organization, credentialing authority  
4 or labor-management committee;

5 G. "family medical history" means information about  
6 a manifested disease or disorder in an individual's family  
7 member;

8 H. "family member" means an individual, whether  
9 living or deceased, who:

10 (1) is related by blood to an employee and is  
11 or at any time was the employee's child, parent, sibling,  
12 half-sibling, niece, nephew, aunt, uncle, grandchild,  
13 grandparent, first cousin, great-grandchild, great-  
14 grandparent, first cousin once removed, great-aunt, great-  
15 uncle, great-great-grandchild or great-great-grandparent;

16 (2) is covered or is eligible to be covered by  
17 an insurance or other benefit program provided to the employee  
18 by an employment entity; or

19 (3) has or at any time had one of the  
20 relationships specified in Paragraph (1) of this subsection to  
21 an individual specified in Paragraph (2) of this subsection;

22 I. "genetic condition" includes a genetic trait and  
23 a genetic disease or disorder;

24 J. "genetic counseling" includes:

25 (1) assessing an individual's genetic risk for

1 an inherited genetic condition by interpreting family medical  
2 histories;

3 (2) educating an individual about the  
4 inheritance, testing, management or prevention of a genetic  
5 condition using an approach that promotes the individual's  
6 autonomy and self-direction in decision-making;

7 (3) helping an individual to understand the  
8 risks and benefits of testing for a genetic trait to promote  
9 informed decision-making about whether to undergo genetic  
10 testing;

11 (4) communicating and interpreting test  
12 results; and

13 (5) providing support, informational resources  
14 and referrals as appropriate to help an individual adapt to the  
15 medical, psychological and familial implications of having, or  
16 being at risk of having, a genetic condition;

17 K. "genetic education" means the process by which  
18 an individual acquires information about an existing or  
19 suspected genetic condition of the individual or a family  
20 member of the individual;

21 L. "genetic information" means information, other  
22 than information about the age or sex of an individual, about:

23 (1) an individual's genetic test;

24 (2) a genetic test of a family member of an  
25 individual;

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1 (3) an individual's family medical history;

2 (4) a request for, or receipt of, genetic  
3 services, or participation in clinical research that includes  
4 genetic services, by an individual or a family member of an  
5 individual; or

6 (5) a genetic test of:

7 (a) a fetus carried by an individual or  
8 a family member of the individual; or

9 (b) an embryo legally held by an  
10 individual or a family member of the individual;

11 M. "genetic monitoring" means a periodic  
12 examination of an employee to evaluate acquired modification to  
13 the employee's genetic material, such as chromosomal damage or  
14 evidence of increased occurrence of mutations, that may have  
15 developed in the course of employment due to exposure to  
16 workplace conditions, conducted to identify, evaluate and  
17 respond to the effects of, or control adverse environmental  
18 exposures in, the workplace;

19 N. "genetic service" means a genetic test, genetic  
20 counseling or genetic education;

21 O. "genetic test" means an analysis of human DNA,  
22 RNA, chromosomes, proteins or metabolites that detects  
23 genotypes, mutations or chromosomal changes. "Genetic test"  
24 does not include an analysis of proteins or metabolites that  
25 does not detect genotypes, mutations or chromosomal changes;

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1           P. "individually identifiable genetic information"  
2 means an individual's genetic information that includes an  
3 identification of the individual or information that could  
4 reasonably be used to identify the individual;

5           Q. "labor-management committee" means a person, or  
6 an agent of a person, that establishes, offers or controls  
7 apprenticeship or other training or retraining programs,  
8 including on-the-job training programs;

9           R. "labor organization" means an organization, or  
10 an agent of the organization, in which employees participate,  
11 that exists for the purpose, in whole or in part, of dealing  
12 with an employer concerning grievances, labor disputes, wages,  
13 rates of pay, hours or other terms or conditions of employment;

14           S. "labor organization member" means a member, a  
15 former member or an applicant for membership in a labor  
16 organization;

17           T. "manifested" means that a disease, disorder or  
18 pathological condition of an individual has been or could  
19 reasonably be diagnosed by a health care professional with  
20 appropriate training and expertise in the relevant field of  
21 medicine. "Manifested" does not include a disease, disorder or  
22 pathological condition if the diagnosis is based principally on  
23 genetic information or on the results of one or more genetic  
24 tests;

25           U. "person" means an individual, corporation,

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1 business trust, statutory trust, estate, trust, partnership,  
2 limited liability company, association, joint venture, public  
3 corporation, government or governmental subdivision, agency or  
4 instrumentality or any other legal or commercial entity;

5 V. "record" means information that is inscribed on  
6 a tangible medium or that is stored in an electronic or other  
7 medium and is retrievable in perceivable form;

8 W. "RNA" means ribonucleic acid;

9 X. "sign" means, with present intent to  
10 authenticate or adopt a record:

11 (1) to execute or adopt a tangible symbol; or

12 (2) to attach to or logically associate with  
13 the record an electronic symbol, sound or process; and

14 Y. "tribunal" means a court, arbitral tribunal or  
15 administrative agency acting in an adjudicatory capacity.

16 SECTION 3. [NEW MATERIAL] APPLICABILITY.--

17 A. The provisions of the Uniform Protection of  
18 Genetic Information in Employment Act on employee access to  
19 genetic information in Section 18 of that act, confidentiality  
20 and retention of genetic information in Section 19 of that act  
21 and disclosure of genetic information in Sections 20 and 21 of  
22 that act apply to genetic information possessed by an  
23 employment entity without regard to when the information was  
24 acquired.

25 B. The provisions of the Uniform Protection of

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1 Genetic Information in Employment Act on acquisition of genetic  
2 information by an employment entity in Sections 5 through 12 of  
3 that act, genetic testing in Section 13 of that act,  
4 authorizations by an employee or a family member of an employee  
5 for acquisition or testing in Sections 14 through 16 of that  
6 act and use of genetic information in Section 17 of that act  
7 apply only to actions taken on or after January 1, 2012.

8 SECTION 4. [NEW MATERIAL] MEDICAL INFORMATION THAT IS NOT  
9 GENETIC INFORMATION.--An employment entity's acquisition, use,  
10 retention or disclosure of medical information that is not  
11 genetic information about a manifested disease, disorder or  
12 pathological condition of an employee does not violate the  
13 Uniform Protection of Genetic Information in Employment Act  
14 even if the manifested disease, disorder or pathological  
15 condition has or may have a genetic basis.

16 SECTION 5. [NEW MATERIAL] GENERAL PROHIBITION ON  
17 ACQUISITION OF GENETIC INFORMATION--INADVERTENTLY OBTAINED  
18 GENETIC INFORMATION.--

19 A. Except as otherwise provided in the Uniform  
20 Protection of Genetic Information in Employment Act, an  
21 employment entity shall not:

22 (1) request, require, purchase or otherwise  
23 acquire genetic information of an employee or a family member  
24 of the employee; or

25 (2) unless allowed by law other than the

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1 Uniform Protection of Genetic Information in Employment Act,  
2 require, offer or provide a genetic test to an employee or a  
3 family member of the employee.

4 B. It is not a violation of the Uniform Protection  
5 of Genetic Information in Employment Act if an employment  
6 entity inadvertently requests or acquires genetic information  
7 of an employee or a family member of the employee.

8 C. An employer, upon learning that the employer has  
9 inadvertently acquired genetic information of an employee or a  
10 family member of the employee, shall promptly:

11 (1) destroy the genetic information if it is  
12 contained in a record;

13 (2) take appropriate action to prevent any use  
14 by the employer or any other person of the genetic information;

15 (3) inform the employee that the employer  
16 inadvertently obtained the genetic information and that the  
17 genetic information has been destroyed; and

18 (4) allow the employee access to the  
19 employee's personnel file to confirm that the employer has not  
20 retained genetic information of the employee or family member  
21 of the employee.

22 SECTION 6. [NEW MATERIAL] EXCEPTION FOR VOLUNTARY  
23 SUBMISSION OF GENETIC INFORMATION BY EMPLOYEE.--An employment  
24 entity may acquire and use an employee's genetic information  
25 if:

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1           A. the employee voluntarily submits the genetic  
2 information to the employment entity and authorizes the  
3 employment entity's acquisition and use of the information in  
4 accordance with Section 14 of the Uniform Protection of Genetic  
5 Information in Employment Act; and

6           B. the employment entity uses the genetic  
7 information only for the purpose authorized by the employee.

8           SECTION 7. [NEW MATERIAL] EXCEPTION FOR INFORMATION UNDER  
9 FAMILY AND MEDICAL LEAVE ACT.--An employment entity may request  
10 or require family medical history from an employee to comply  
11 with the certification provisions of the federal Family and  
12 Medical Leave Act of 1993, 29 U.S.C. Section 2613.

13           SECTION 8. [NEW MATERIAL] EXCEPTION FOR INFORMATION IN  
14 PUBLIC DOCUMENTS.--

15           A. Except as otherwise provided in Subsection B of  
16 this section, an employment entity may obtain a document that  
17 is publicly available, including a newspaper, magazine,  
18 periodical or book, even if it contains genetic information of  
19 an employee or of a family member of an employee.

20           B. An employment entity shall not obtain genetic  
21 information of an employee or a family member of an employee by  
22 purchasing medical or court record databases.

23           SECTION 9. [NEW MATERIAL] EXCEPTION FOR INFORMATION AND  
24 TESTING FOR VOLUNTARY HEALTH OR GENETIC SERVICES.--An  
25 employment entity may acquire genetic information of an

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1 employee or a family member of the employee and may offer and  
2 provide genetic testing to the employee or family member of the  
3 employee in accordance with Section 13 of the Uniform  
4 Protection of Genetic Information in Employment Act for use in  
5 providing voluntary health or genetic services to the employee  
6 or family member of the employee, including as part of a  
7 voluntary wellness program, if:

8 A. the employee or family member of the employee  
9 authorizes the employment entity to acquire genetic information  
10 or provide genetic testing in accordance with Section 14 of the  
11 Uniform Protection of Genetic Information in Employment Act;

12 B. individually identifiable genetic information of  
13 the employee or family member of the employee is used only to  
14 provide health and genetic services to the employee or family  
15 member of the employee;

16 C. individually identifiable genetic information is  
17 provided only to the following:

18 (1) the employee or, if a family member of an  
19 employee is receiving genetic services, to the family member of  
20 the employee;

21 (2) a health care professional, if designated  
22 by the employee or family member of the employee; or

23 (3) a licensed health care professional or  
24 board-certified genetic counselor involved in providing the  
25 employment entity's genetic services; and

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1           D. genetic information is not disclosed to the  
2 employment entity except in an aggregate form under  
3 circumstances that do not disclose the identity of the  
4 individual employee or family member of the employee.

5           **SECTION 10. [NEW MATERIAL] EXCEPTION FOR INFORMATION AND**  
6 **TESTING FOR GENETIC MONITORING.--**An employment entity may  
7 acquire an employee's genetic information and may offer and  
8 provide genetic testing to an employee to conduct genetic  
9 monitoring of the biological effects of workplace conditions  
10 if:

11           A. the employment entity provides written notice of  
12 the genetic monitoring to the employee;

13           B. the genetic monitoring is:

14                   (1) required by state or federal law; or

15                   (2) authorized by the employee in accordance  
16 with Section 14 of the Uniform Protection of Genetic  
17 Information in Employment Act;

18           C. the genetic monitoring is in compliance with:

19                   (1) federal genetic monitoring law, including  
20 the federal Occupational Safety and Health Act of 1970, 29  
21 U.S.C. Section 651 et seq., the Federal Mine Safety and Health  
22 Act of 1977, 30 U.S.C. Section 801 et seq., or the federal  
23 Atomic Energy Act of 1954, 42 U.S.C. Section 2011 et seq., and  
24 rules adopted pursuant to those acts; and

25                   (2) the state's genetic monitoring law,

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1 including rules adopted pursuant to the federal Occupational  
2 Safety and Health Act of 1970, 29 U.S.C. Section 651 et seq.;

3 D. the employment entity pays for the genetic  
4 testing and the genetic counseling required by Section 13 of  
5 the Uniform Protection of Genetic Information in Employment  
6 Act;

7 E. individually identifiable genetic information is  
8 provided only to the following:

9 (1) the employee;

10 (2) a health care professional if designated  
11 by the employee; or

12 (3) a licensed health care professional or  
13 board-certified genetic counselor involved in providing the  
14 employment entity's monitoring program; and

15 F. genetic information is not disclosed to the  
16 employment entity except in an aggregate form under  
17 circumstances that do not disclose the identity of the  
18 employee.

19 SECTION 11. [NEW MATERIAL] EXCEPTION FOR CERTAIN  
20 EMPLOYERS THAT CONDUCT DNA ANALYSIS.--An employer that conducts  
21 DNA analysis for law enforcement purposes at a forensic  
22 laboratory or for purposes of identifying human remains may  
23 request or require genetic information or genetic testing of an  
24 employee to the extent necessary to analyze DNA identification  
25 markers for quality control to detect sample contamination by

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1 DNA of the employee.

2 SECTION 12. [NEW MATERIAL] EXCEPTION FOR CERTAIN LEGAL  
3 PROCEEDINGS.--If an employee places the employee's health at  
4 issue in a proceeding before a tribunal in which an employment  
5 entity is a party, the employment entity may obtain under the  
6 rules of civil procedure or other applicable law genetic  
7 information about the employee without the employee's  
8 authorization only if:

9 A. the genetic information is relevant to a claim  
10 or defense in the proceeding;

11 B. on a motion by the employment entity, a tribunal  
12 orders the employee to take a genetic test or provide genetic  
13 information after finding that the genetic information is  
14 necessary in the interest of justice to resolve the proceeding  
15 and that the information is otherwise unavailable;

16 C. the employment entity pays for the genetic test  
17 if one is ordered pursuant to Subsection B of this section; and

18 D. the tribunal grants a protective order to  
19 protect the privacy of the genetic information.

20 SECTION 13. [NEW MATERIAL] REQUIREMENTS FOR GENETIC  
21 TESTING.--An employment entity that provides a genetic test to  
22 an employee or family member of the employee as part of health  
23 or genetic services offered pursuant to Section 9 of the  
24 Uniform Protection of Genetic Information in Employment Act or  
25 for a genetic monitoring program pursuant to Section 10 of that

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1 act shall:

2 A. provide genetic counseling about the risks and  
3 benefits of a genetic test before the employee or the family  
4 member of the employee authorizes the test pursuant to Section  
5 14 of the Uniform Protection of Genetic Information in  
6 Employment Act unless:

7 (1) the employee or family member of the  
8 employee knowingly and voluntarily waives counseling before the  
9 authorization in a signed record that contains information  
10 about the benefits of genetic counseling; or

11 (2) the test is part of genetic monitoring  
12 that is required by state or federal law pursuant to Paragraph  
13 (1) of Subsection B of Section 10 of the Uniform Protection of  
14 Genetic Information in Employment Act;

15 B. unless the employee or family member of the  
16 employee directs otherwise, require the testing organization to  
17 report the test result to the employee or family member of the  
18 employee and any health care professional designated by the  
19 employee or family member of the employee;

20 C. unless the employee or family member of the  
21 employee directs otherwise, provide genetic counseling for the  
22 employee or family member of the employee about a test result  
23 that indicates a disease or disorder or increased risk for a  
24 disease or disorder;

25 D. require the destruction of the employee's or

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1 employee's family member's biological sample obtained for a  
2 genetic test as soon as practicable after the test is  
3 completed, unless retention of the sample is:

4 (1) knowingly and voluntarily authorized by  
5 the employee or family member of the employee in a record  
6 signed by the employee or family member of the employee;

7 (2) permitted by law other than the Uniform  
8 Protection of Genetic Information in Employment Act; or

9 (3) ordered by a tribunal; and

10 E. require the destruction or expungement of  
11 information generated from the biological sample other than the  
12 authorized test as soon as practicable after the test is  
13 completed unless retention of the information is:

14 (1) knowingly and voluntarily authorized by  
15 the employee or family member of the employee in a record  
16 signed by the employee or family member of the employee;

17 (2) permitted by law other than the Uniform  
18 Protection of Genetic Information in Employment Act; or

19 (3) ordered by a tribunal.

20 SECTION 14. [NEW MATERIAL] EMPLOYEE AUTHORIZATION FOR  
21 ACQUISITION OF GENETIC INFORMATION AND GENETIC TESTING.--

22 A. Except as otherwise provided by law other than  
23 the Uniform Protection of Genetic Information in Employment  
24 Act, an authorization of an employee or a family member of the  
25 employee for an employment entity to acquire the employee's or

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1 employee's family member's genetic information or provide a  
2 genetic test shall be knowing and voluntary and indicated in a  
3 record signed by the employee or family member of the employee  
4 prior to the acquisition or test. An employment entity that  
5 receives an authorization may use the genetic information or  
6 analyze a genetic test only in accordance with the  
7 authorization. The authorization shall not expand the  
8 authority of the employment entity to acquire or use genetic  
9 information or to provide genetic testing beyond that permitted  
10 by the Uniform Protection of Genetic Information in Employment  
11 Act. The authorization shall not waive any right of the  
12 employee or family member of the employee pursuant to federal  
13 law or the law of New Mexico. The employment entity shall  
14 provide a copy of the authorization to the employee or family  
15 member of the employee who signed the authorization.

16 B. An authorization for an employment entity to  
17 acquire genetic information of an employee or a family member  
18 of an employee pursuant to Section 6 or 9 of the Uniform  
19 Protection of Genetic Information in Employment Act or  
20 Paragraph (2) of Subsection B of Section 10 of that act shall:

21 (1) describe the type of information that will  
22 be acquired;

23 (2) describe the authorized uses of the  
24 information;

25 (3) describe restrictions on disclosure of the

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1 information; and

2 (4) state that the employee or family member  
3 of the employee is entitled to a copy of the authorization.

4 C. An authorization for an employment entity to  
5 provide a genetic test pursuant to Section 9 of the Uniform  
6 Protection of Genetic Information in Employment Act or  
7 Paragraph (2) of Subsection B of Section 10 of that act shall:

8 (1) describe the test to be performed, its  
9 purpose and the authorized uses of the test result;

10 (2) inform the employee or family member of  
11 the employee that the authorized test will be analyzed only for  
12 the purposes specified in the authorization;

13 (3) explain the benefit of receiving genetic  
14 counseling about the risks and benefits of the test before the  
15 employee or family member of the employee authorizes the test;

16 (4) inform the employee or family member of  
17 the employee that the employment entity is obligated to provide  
18 genetic counseling before the employee or family member of the  
19 employee authorizes the test, unless the employee or family  
20 member of the employee waives genetic counseling;

21 (5) if the test is part of a genetic  
22 monitoring program, inform the employee or family member of the  
23 employee that the employment entity is obligated to pay for  
24 genetic counseling before the employee or family member of the  
25 employee authorizes the test, unless the employee or family

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1 member of the employee waives genetic counseling;

2 (6) inform the employee or family member of  
3 the employee that the test result will be reported to the  
4 employee or family member of the employee and a health care  
5 professional designated by the employee or family member of the  
6 employee, unless the employee or family member of the employee  
7 directs otherwise;

8 (7) explain the benefit of receiving genetic  
9 counseling about a test result that indicates a disease or  
10 disorder or increased risk for a disease or disorder and inform  
11 the employee or family member of the employee that the  
12 employment entity is obligated to provide genetic counseling  
13 about the test result, unless the employee or family member of  
14 the employee waives genetic counseling;

15 (8) if the test is part of a genetic  
16 monitoring program, inform the employee or family member of the  
17 employee that the employment entity is obligated to pay for  
18 genetic counseling about a test result that indicates a disease  
19 or disorder or increased risk for a disease or disorder, unless  
20 the employee or family member of the employee waives genetic  
21 counseling;

22 (9) include an opportunity for the employee or  
23 family member of the employee to provide directions in a record  
24 about reporting test results and genetic counseling;

25 (10) inform the employee or employee's family

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1 member of the employee that the employee's or employee's family  
2 member's biological sample will be destroyed as soon as  
3 practicable after the test is completed, unless the employee or  
4 family member of the employee authorizes retention of the  
5 sample or unless otherwise ordered by a tribunal;

6 (11) inform the employee or family member of  
7 the employee that data generated in the testing process that  
8 are not relevant to the authorized test will be destroyed or  
9 expunged as soon as practicable after the test is completed,  
10 unless the employee or family member of the employee authorizes  
11 retention of the information or unless otherwise ordered by a  
12 tribunal;

13 (12) describe restrictions on disclosures of  
14 the test result; and

15 (13) state that the employee or family member  
16 of the employee is entitled to a copy of the authorization.

17 SECTION 15. [NEW MATERIAL] FORM FOR AUTHORIZATION FOR  
18 ACQUISITION OF GENETIC INFORMATION.--An authorization  
19 substantially in the following form, when completed and signed,  
20 satisfies Subsection B of Section 14 of the Uniform Protection  
21 of Genetic Information in Employment Act.

22 "AUTHORIZATION FOR ACQUISITION OF GENETIC INFORMATION

23 I, \_\_\_\_\_, authorize \_\_\_\_\_

24 (Printed name) (Name of employment entity)

25 to acquire my genetic information as checked below.

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1 PURPOSE FOR PROVIDING GENETIC INFORMATION

2 \_\_\_\_\_ This genetic information is provided for a  
3 voluntary genetic monitoring program conducted by  
4 \_\_\_\_\_.  
5 (Name of employment entity)

6 \_\_\_\_\_ may use this information  
7 (Name of employment entity)

8 only for the following purposes:  
9 \_\_\_\_\_.  
10 (Authorized uses)

11 \_\_\_\_\_ This genetic information is provided for  
12 \_\_\_\_\_, a voluntary program offered by  
13 (Name of program)

14 \_\_\_\_\_ to provide health and  
15 (Name of employment entity)  
16 genetic services.

17 \_\_\_\_\_ may use this information  
18 (Name of employment entity)  
19 only for the following purposes:  
20 \_\_\_\_\_.  
21 (Authorized uses)

22 \_\_\_\_\_ This genetic information is provided to  
23 \_\_\_\_\_ at my initiative and by my  
24 (Name of employment entity)  
25 voluntary submission for the following purpose:

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1 \_\_\_\_\_.

2 (Authorized uses)

3 TYPE OF GENETIC INFORMATION

4 \_\_\_\_\_ Family medical history

5 Family medical history is information concerning  
6 diseases and disorders of family members and other  
7 relatives.

8 \_\_\_\_\_ My genetic test results: \_\_\_\_\_

9 (Name of genetic test)

10 Genetic tests are tests of DNA, RNA, chromosomes or  
11 other material to determine your genetic  
12 characteristics. If \_\_\_\_\_ will

13 (Name of employment entity)

14 provide the genetic tests, a separate authorization is  
15 necessary.

16 NOTICE CONCERNING DISCLOSURE OF YOUR GENETIC INFORMATION

17 If this genetic information is provided for a voluntary  
18 genetic monitoring program or a voluntary program that provides  
19 health and genetic services, only you, a health care  
20 professional whom you designate and health care professionals  
21 involved in providing the program will have access to your  
22 individual genetic information. Otherwise,

23 \_\_\_\_\_ will not have access to your

24 (Name of employment entity)

25 genetic information except in an aggregate form that will not

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1 identify you. However, your genetic information may be  
2 disclosed: (1) to certain health researchers; (2) to  
3 government officials investigating compliance with laws  
4 protecting the privacy of genetic information or prohibiting  
5 genetic discrimination; (3) to a public health agency if the  
6 test result concerns a life-threatening contagious disease; (4)  
7 if expressly ordered by a court, arbitral tribunal or  
8 administrative agency; or (5) if you request and authorize a  
9 disclosure.

10 YOUR LEGAL RIGHTS

11 By signing this authorization, you do not waive any legal  
12 rights to which you are entitled. You are entitled to a copy  
13 of this authorization.

14 SIGNATURE OF INDIVIDUAL MAKING THIS AUTHORIZATION

15 \_\_\_\_\_ " \_\_\_\_\_  
16 (Signature) (Date)

17 SECTION 16. [NEW MATERIAL] FORM FOR AUTHORIZATION OF  
18 GENETIC TESTING.--An authorization substantially in the  
19 following form, when completed and signed, satisfies Subsection  
20 C of Section 14 of the Uniform Protection of Genetic  
21 Information in Employment Act.

22 "AUTHORIZATION FOR GENETIC TESTING  
23 LIMITED AUTHORIZATION

24 Only the genetic tests that you authorize on this form  
25 will be performed on your biological sample. These tests are

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1 voluntary.

2 AVAILABILITY OF GENETIC COUNSELING BEFORE SIGNING THIS  
3 AUTHORIZATION

4 Before you complete this authorization, it is highly  
5 recommended that you receive genetic counseling. Genetic  
6 counseling will help you assess your risk for an inherited  
7 condition based on your family medical history and will help  
8 you understand the options for prevention and management of  
9 genetic conditions. It will help you understand and evaluate  
10 the risks, benefits and consequences for you and your family of  
11 having the test(s) listed below.

12 \_\_\_\_\_ will provide (and pay for)  
13 (Name of employment entity)

14 this genetic counseling.

15 PROPOSED GENETIC TESTS

16 \_\_\_\_\_ proposes to provide the  
17 (Name of employment entity)

18 following genetic tests:

19 \_\_\_\_\_ . This test is provided as part of a  
20 (Name of test)

21 genetic monitoring program. The purpose of this test is to  
22 monitor the effect of your exposure to \_\_\_\_\_ .  
23 (Workplace condition)

24 The result of the test will be used only for the following  
25 purposes: \_\_\_\_\_ .

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(Authorized uses)

\_\_\_\_\_. This test is provided by

(Name of test)

\_\_\_\_\_.

(Name of health or genetic services program)

The result will be used only for the following purposes:

\_\_\_\_\_.

(Authorized uses)

REPORTING TEST RESULTS AND GENETIC COUNSELING

The test results will be reported to you and to a health care professional whom you designate unless you direct otherwise. It is recommended that you receive genetic counseling about the test results. Genetic counseling is important for understanding the test results in the context of your medical and family history. It can also provide you with support, informational resources and referrals, as appropriate, that can help you adapt to the implications of being at risk of a genetic condition. \_\_\_\_\_ will provide

(Name of employment entity)

(and pay for) genetic counseling about the test results unless you decline genetic counseling.

NOTICE CONCERNING DISCLOSURE OF THE TEST RESULTS

Other than the medical professionals involved in providing this program, \_\_\_\_\_ will not have access

(Name of employment entity)

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1 to the test results of the individuals who authorize this test  
2 except in an aggregate form that will not identify you.

3 However, the test results may be disclosed: (1) to certain  
4 health researchers; (2) to government officials investigating  
5 compliance with laws protecting the privacy of genetic  
6 information or prohibiting genetic discrimination; (3) to a  
7 public health agency if the test result concerns a  
8 life-threatening contagious disease; (4) if expressly ordered  
9 by a court, arbitral tribunal or administrative agency; or (5)  
10 if you request and authorize a disclosure.

11 DESTRUCTION OF YOUR BIOLOGICAL SAMPLE AND TESTING DATA

12 After the genetic test, your biological sample and data  
13 that are not necessary for the test you authorized will be  
14 destroyed as soon as practicable unless you authorize otherwise  
15 in writing or unless a court, an arbitral tribunal or an  
16 administrative agency requires retention of the sample.

17 YOUR LEGAL RIGHTS

18 By signing this authorization, you do not waive any legal  
19 rights to which you are entitled. You are entitled to a copy  
20 of this authorization.

21 AUTHORIZATION

22 I, \_\_\_\_\_, authorize each genetic test that  
23 (Printed name)

24 I have checked above.

25 \_\_\_\_\_ I wish to receive test results.

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1           C. A labor organization shall not take an adverse  
2 action against a labor organization member based on the  
3 member's genetic information, including excluding or expelling  
4 the member from membership in the labor organization or  
5 discriminating against the member.

6           D. An employer, labor organization or  
7 labor-management committee controlling an apprenticeship or a  
8 training or retraining program shall not take an adverse  
9 employment action against an individual based on the  
10 individual's genetic information, including discriminating  
11 against the individual in admission to or employment in the  
12 program.

13           E. A credentialing authority shall not take an  
14 adverse action against an individual based on the individual's  
15 genetic information, including discriminating against the  
16 individual in the provision of credentials.

17           F. An employment entity shall not limit, segregate  
18 or classify an individual, or fail or refuse to refer the  
19 individual for employment, based on the individual's genetic  
20 information in a way that would deprive or tend to deprive the  
21 individual of employment opportunities or otherwise adversely  
22 affect the status of the individual as an employee.

23           G. An employment agency, labor organization, labor-  
24 management training or apprenticeship program or credentialing  
25 authority shall not cause or attempt to cause an employer to

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1 discriminate against an employee in violation of the Uniform  
2 Protection of Genetic Information in Employment Act or a law of  
3 New Mexico other than the Uniform Protection of Genetic  
4 Information in Employment Act.

5 H. An employment entity shall not discriminate  
6 against an employee because the employee:

7 (1) opposed an act or practice made unlawful  
8 by the federal Genetic Information Nondiscrimination Act of  
9 2008, 42 U.S.C. Section 2000ff et seq., or the Uniform  
10 Protection of Genetic Information in Employment Act; or

11 (2) made a charge, testified, assisted or  
12 participated in any manner in an investigation, proceeding or  
13 hearing pursuant to the federal Genetic Information  
14 Nondiscrimination Act of 2008, 42 U.S.C. Section 2000ff et  
15 seq., or the Uniform Protection of Genetic Information in  
16 Employment Act.

17 SECTION 18. [NEW MATERIAL] EMPLOYEE ACCESS TO GENETIC  
18 INFORMATION.--An employee may inspect, request correction of or  
19 obtain a copy of any record of an employment entity that  
20 contains genetic information of the employee. An employee  
21 shall be permitted to provide genetic information in a signed  
22 record to supplement or correct genetic information in the  
23 employment entity's record.

24 SECTION 19. [NEW MATERIAL] CONFIDENTIALITY AND RETENTION  
25 OF GENETIC INFORMATION.--Except for genetic information that an

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1 employment entity obtains in aggregate form pursuant to Section  
2 9 of the Uniform Protection of Genetic Information in  
3 Employment Act for use in providing health or genetic services  
4 and pursuant to Section 10 of that act for use in conducting  
5 genetic monitoring:

6 A. an employment entity shall treat an employee's  
7 genetic information as a confidential record;

8 B. if an employment entity possesses an employee's  
9 genetic information, the employment entity shall keep the  
10 genetic information in a record separate from the employee's  
11 personnel file; and

12 C. the requirement of Subsection B of this section  
13 is satisfied if an employment entity keeps the genetic  
14 information in the record in which it maintains confidential  
15 medical information subject to the federal Americans with  
16 Disabilities Act of 1990, Section 102(d)(3)(B), 42 U.S.C.  
17 Section 12112(d)(3)(B).

18 SECTION 20. [NEW MATERIAL] DISCLOSURE OF GENETIC  
19 INFORMATION.--

20 A. Except as otherwise permitted in this section,  
21 an employment entity shall not disclose genetic information of  
22 an employee or a family member of the employee.

23 B. An employment entity may disclose genetic  
24 information of an employee or a family member of the employee:

25 (1) to the employee or, if the genetic

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1 information is that of a family member of the employee, to the  
2 family member of the employee and, at the direction of the  
3 employee or family member of the employee, to a health care  
4 professional designated by the employee or family member of the  
5 employee in a record signed by the employee or family member of  
6 the employee;

7 (2) to a person that the employee or, if the  
8 genetic information is that of a family member of the employee,  
9 the family member of the employee has designated in an  
10 authorization pursuant to Subsection D of this section;

11 (3) to an occupational or other health  
12 researcher if the research is conducted in compliance with  
13 federal department of health and human services rules on the  
14 protection of human research subjects, 45 C.F.R. Part 46;

15 (4) to the extent ordered by a tribunal;

16 (5) in response to an official request from a  
17 government official who is investigating compliance with the  
18 Uniform Protection of Genetic Information in Employment Act or  
19 with the federal Genetic Information Nondiscrimination Act of  
20 2008, 42 U.S.C. Section 2000ff et seq., if the information is  
21 responsive to the government's request;

22 (6) to the extent that the disclosure is made  
23 to comply with the certification provisions of the federal  
24 Family and Medical Leave Act of 1993, 29 U.S.C. Section 2613;

25 (7) to a public health agency when the genetic

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1 information concerns the presence in an employee or a family  
2 member of the employee of a contagious disease that presents an  
3 imminent risk of death or life-threatening illness; or

4 (8) in aggregate form in connection with  
5 health or genetic services provided pursuant to Section 9 of  
6 the Uniform Protection of Genetic Information in Employment Act  
7 or genetic monitoring conducted pursuant to Section 10 of that  
8 act.

9 C. Unless notice is otherwise given to an employee  
10 or, if the genetic information is that of a family member of  
11 the employee, to the family member of the employee, the  
12 employment entity of the employee shall provide notice in a  
13 record to the employee or family member of the employee whose  
14 genetic information is disclosed if the disclosure is made  
15 pursuant to Paragraph (4) or (7) of Subsection B of this  
16 section.

17 D. An authorization for an employment entity to  
18 disclose genetic information of an employee or a family member  
19 of an employee pursuant to Paragraph (2) of Subsection B of  
20 this section shall be knowing and voluntary and indicated in a  
21 record signed by the employee or family member of the employee.  
22 An employment entity that receives an authorization may  
23 disclose the genetic information only in accordance with the  
24 authorization. The authorization shall not expand the  
25 authority of the employment entity to disclose genetic

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1 information beyond that permitted by the Uniform Protection of  
2 Genetic Information in Employment Act. The authorization shall  
3 not waive any right of the employee or family member of the  
4 employee pursuant to federal law or the law of New Mexico. The  
5 employment entity shall provide a copy of the authorization to  
6 the employee or family member of the employee who signed the  
7 authorization. The authorization shall:

8 (1) describe the genetic information to be  
9 disclosed;

10 (2) identify the person to whom the genetic  
11 information is to be disclosed;

12 (3) indicate the duration of the  
13 authorization; and

14 (4) state that the employee or family member  
15 of the employee is entitled to a copy of the authorization.

16 SECTION 21. [NEW MATERIAL] FORM FOR AUTHORIZATION FOR  
17 DISCLOSURE OF GENETIC INFORMATION.--An authorization  
18 substantially in the following form, when completed and signed,  
19 satisfies the authorization requirement in Subsection D of  
20 Section 20 of the Uniform Protection of Genetic Information in  
21 Employment Act.

22 "AUTHORIZATION FOR DISCLOSURE OF GENETIC INFORMATION  
23 I, \_\_\_\_\_, authorize \_\_\_\_\_  
24 (Printed name) (Name of employment entity)  
25 to disclose my following genetic information

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1 \_\_\_\_\_ to  
 2 (Specific description of genetic information)  
 3 \_\_\_\_\_.  
 4 (Identity of person or entity to receive the disclosure)  
 5 \_\_\_\_\_ This authorization is for one disclosure only.  
 6 \_\_\_\_\_ This authorization continues in effect until I revoke  
 7 it.  
 8 \_\_\_\_\_ This authorization continues in effect until \_\_\_\_\_.  
 9 (Date)  
 10 \_\_\_\_\_ " \_\_\_\_\_  
 11 (Signature) (Date)

12 SECTION 22. [NEW MATERIAL] RELATIONSHIP TO HEALTH  
 13 REGULATIONS.--The Uniform Protection of Genetic Information in  
 14 Employment Act does not prevent a covered entity under the  
 15 rules issued by the federal secretary of health and human  
 16 services pursuant to Section 264(c) of the federal Health  
 17 Insurance Portability and Accountability Act of 1996, 42 U.S.C.  
 18 Section 1320d-2 note, from using or disclosing health  
 19 information that is authorized for a covered entity by the  
 20 rules.

21 SECTION 23. [NEW MATERIAL] REMEDIES.--  
 22 A. A person aggrieved by a violation of the Uniform  
 23 Protection of Genetic Information in Employment Act has a cause  
 24 of action for money damages or other relief.  
 25 B. A person may seek remedies provided by law other

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1 than the Uniform Protection of Genetic Information in  
2 Employment Act. Exhaustion of administrative remedies is not  
3 required before seeking relief for a violation of the Uniform  
4 Protection of Genetic Information in Employment Act.

5 C. A tribunal may allow a prevailing employee  
6 reasonable attorney fees and costs.

7 SECTION 24. [NEW MATERIAL] CAUSE OF ACTION FOR DISPARATE  
8 IMPACT.--Notwithstanding any other provision of the Uniform  
9 Protection of Genetic Information in Employment Act, "disparate  
10 impact", as that term is used in 42 U.S.C. Section 2000e-2(k),  
11 does not establish a cause of action under the Uniform  
12 Protection of Genetic Information Employment Act.

13 SECTION 25. [NEW MATERIAL] UNIFORMITY OF APPLICATION AND  
14 CONSTRUCTION.--In applying and construing the Uniform  
15 Protection of Genetic Information in Employment Act,  
16 consideration shall be given to the need to promote uniformity  
17 of the law with respect to its subject matter among states that  
18 enact it.

19 SECTION 26. [NEW MATERIAL] RELATION TO ELECTRONIC  
20 SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.--The Uniform  
21 Protection of Genetic Information in Employment Act modifies,  
22 limits and supersedes the federal Electronic Signatures in  
23 Global and National Commerce Act, but it does not modify, limit  
24 or supersede Section 101(c) of that act or authorize electronic  
25 delivery of any of the notices described in Section 103(b) of

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1 that act.

2 SECTION 27. Section 24-21-3 NMSA 1978 (being Laws 1998,  
3 Chapter 77, Section 3) is amended to read:

4 "24-21-3. GENETIC ANALYSIS PROHIBITED WITHOUT INFORMED  
5 CONSENT--EXCEPTIONS.--

6 A. Except as provided in Subsection C of this  
7 section, no person shall obtain genetic information or samples  
8 for genetic analysis from a person without first obtaining  
9 informed and written consent from the person or the person's  
10 authorized representative.

11 B. Except as provided in Subsection C of this  
12 section, genetic analysis of a person or collection, retention,  
13 transmission or use of genetic information without the informed  
14 and written consent of the person or the person's authorized  
15 representative is prohibited.

16 C. A person's DNA or genetic information or the  
17 results of the person's genetic analysis may be obtained,  
18 retained, transmitted or used without the person's written and  
19 informed consent pursuant to federal or state law or  
20 regulations only:

21 (1) to identify a person in the course of a  
22 criminal investigation by a law enforcement agency;

23 (2) if the person has been convicted of a  
24 felony, for purposes of maintaining a DNA database for law  
25 enforcement purposes;

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- 1 (3) to identify deceased persons;  
2 (4) to establish parental identity;  
3 (5) to screen newborns;  
4 (6) if the DNA, genetic information or results  
5 of genetic analysis are not identified with the person or  
6 person's family members;  
7 (7) by a court for determination of damage  
8 awards pursuant to the Genetic Information Privacy Act;  
9 (8) by medical repositories or registries;  
10 (9) for the purpose of medical or scientific  
11 research and education, including retention of gene products,  
12 genetic information or genetic analysis if the identity of the  
13 person or person's family members is not disclosed; [ø#]  
14 (10) for the purpose of emergency medical  
15 treatment consistent with applicable law; or  
16 (11) as provided by the Uniform Protection of  
17 Genetic Information in Employment Act.

18 D. Actions of an insurer and third parties dealing  
19 with an insurer in the ordinary course of conducting and  
20 administering the business of life, disability income or long-  
21 term care insurance are exempt from the provisions of this  
22 section if the use of genetic analysis or genetic information  
23 for underwriting purposes is based on sound actuarial  
24 principles or related to actual or reasonably anticipated  
25 experience. However, before or at the time of collecting

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1 genetic information for use in conducting and administering the  
2 business of life, disability income or long-term care  
3 insurance, the insurer shall notify in writing an applicant for  
4 insurance or the insured that the information may be used,  
5 transmitted or retained solely for the purpose of conducting  
6 and administering the business of life, disability income or  
7 long-term care insurance.

8 E. Nothing in Paragraph (5), (6), (8), (9) or (10)  
9 of Subsection C of this section [~~3 of the Genetic Information~~  
10 ~~Privacy Act~~] authorizes obtaining, retaining, transmitting or  
11 using a person's DNA, genetic information or the results of  
12 genetic analysis if the person [~~his~~] or the person's authorized  
13 representative or guardian, or the parent or guardian of a  
14 minor child, objects on the basis of religious tenets or  
15 practices."

16 SECTION 28. EFFECTIVE DATE.--The effective date of the  
17 provisions of this act is January 1, 2012.