

1 SENATE BILL 445

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 Cisco McSorley

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10 AN ACT

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

14  
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

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

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

25 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 that has fifteen 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 an apprenticeship or other training or retraining 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 described 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) providing an individual with an assessment

1 of the individual's genetic risk for an inherited genetic  
2 condition by interpreting family medical 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 understand the risks  
8 and benefits of testing for a genetic trait to promote informed  
9 decision-making about whether to undergo genetic testing;

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

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

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

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

23 (1) the individual's genetic test;

24 (2) a genetic test of the family member;

25 (3) the individual's family medical history;

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

4 (5) a genetic test of:

5 (a) a fetus carried by the individual or  
6 the family member of the individual; or

7 (b) an embryo legally held by the  
8 individual or the family member;

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

17 N. "genetic service" means a genetic test, genetic  
18 counseling or genetic education;

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

24 P. "individually identifiable genetic information"  
25 means an individual's genetic information that includes an

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1 identification of the individual or information that could  
2 reasonably be used to identify the individual;

3 Q. "labor-management committee" means a person, or  
4 an agent of a person, that establishes, offers or controls  
5 apprenticeship or other training or retraining programs;

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

11 S. "labor organization member" means a member, a  
12 former member or an applicant for membership in a labor  
13 organization;

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

21 U. "person" means an individual, corporation,  
22 business trust, statutory trust, estate, trust, partnership,  
23 limited liability company, association, joint venture, public  
24 corporation, government or governmental subdivision, agency or  
25 instrumentality or any other legal or commercial entity;

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

4           W. "RNA" means ribonucleic acid;

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

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

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

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

12           **SECTION 3. [NEW MATERIAL] APPLICABILITY.--**

13           A. The provisions of the Uniform Protection of  
14 Genetic Information in Employment Act on employee access to  
15 genetic information in Section 18 of that act, confidentiality  
16 and retention of genetic information in Section 19 of that act  
17 and disclosure of genetic information in Sections 20 and 21 of  
18 that act apply to genetic information possessed by an  
19 employment entity regardless of when the information was  
20 acquired.

21           B. The provisions of the Uniform Protection of  
22 Genetic Information in Employment Act on acquisition of genetic  
23 information by an employment entity in Sections 5 through 12 of  
24 that act, genetic testing in Section 13 of that act,  
25 authorization by an employee or a family member of an employee

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1 for acquisition or testing in Sections 14 through 16 of that  
2 act and use of genetic information in Section 17 of that act  
3 apply only to actions taken on or after January 1, 2014.

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

13 SECTION 5. [NEW MATERIAL] GENERAL PROHIBITION ON  
14 ACQUISITION OF GENETIC INFORMATION--INADVERTENTLY OBTAINED  
15 GENETIC INFORMATION.--

16 A. Except as otherwise provided in the Uniform  
17 Protection of Genetic Information in Employment Act, an  
18 employment entity shall not:

19 (1) request, require, purchase or otherwise  
20 acquire genetic information of an employee or a family member  
21 of the employee; or

22 (2) unless allowed by law other than the  
23 Uniform Protection of Genetic Information in Employment Act,  
24 require, offer or provide a genetic test to an employee or a  
25 family member of the employee.

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

5           C. An employment entity, upon learning that it has  
6 inadvertently acquired genetic information of an employee or a  
7 family member of the employee, shall promptly:

8                   (1) destroy the genetic information if it is  
9 contained in a record;

10                   (2) take appropriate action to prevent any use  
11 by the employment entity or any other person of the genetic  
12 information;

13                   (3) inform the employee that the employment  
14 entity inadvertently obtained the genetic information and that  
15 the genetic information has been destroyed; and

16                   (4) allow the employee access to the  
17 employee's personnel file, or another analogous record, to  
18 confirm that the employment entity has not retained genetic  
19 information of the employee or family member of the employee.

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

24                   A. the employee voluntarily submits the genetic  
25 information to the employment entity and authorizes the

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1 employment entity's acquisition and use of the information in  
2 accordance with Section 14 of the Uniform Protection of Genetic  
3 Information in Employment Act; and

4 B. the employment entity uses the genetic  
5 information only for the purpose authorized by the employee.

6 SECTION 7. [NEW MATERIAL] EXCEPTION FOR INFORMATION UNDER  
7 FAMILY AND MEDICAL LEAVE ACT.--An employment entity may request  
8 or require relevant family medical history from an employee:

9 A. to comply with the certification provisions of  
10 the federal Family and Medical Leave Act of 1993, 29 U.S.C.  
11 Section 2613; or

12 B. under a policy of the employment entity that is  
13 applicable to all employees and that permits an employee to use  
14 leave to care for a sick family member and requires an employee  
15 to substantiate the need for leave by providing information  
16 about the health condition of the family member.

17 SECTION 8. [NEW MATERIAL] EXCEPTION FOR INFORMATION IN  
18 PUBLIC DOCUMENT.--

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

24 B. An employment entity shall not obtain genetic  
25 information of an employee or a family member of an employee by

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1 purchasing medical or court record databases.

2 SECTION 9. [NEW MATERIAL] EXCEPTION FOR INFORMATION AND  
3 TESTING FOR VOLUNTARY HEALTH OR GENETIC SERVICES.--An  
4 employment entity may acquire genetic information of an  
5 employee or a family member of the employee and may offer and  
6 provide genetic testing to the employee or family member in  
7 accordance with Section 13 of the Uniform Protection of Genetic  
8 Information in Employment Act for use in providing voluntary  
9 health or genetic services to the employee or family member,  
10 including as part of a voluntary wellness program, if:

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

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

18 C. individually identifiable genetic information is  
19 provided only to one or more of the following:

- 20 (1) the employee or, if a family member is  
21 receiving genetic services, only to the family member;
- 22 (2) a health care professional, if designated  
23 by the employee or family member; and
- 24 (3) a licensed health care professional or  
25 board-certified genetic counselor involved in providing the

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1 employment entity's genetic services; and

2 D. except for a disclosure pursuant to Paragraph  
3 (3) of Subsection C of this section, genetic information shall  
4 not be disclosed to the employment entity except in an  
5 aggregate form that does not disclose the identity of the  
6 individual employee or family member.

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

13 A. the employment entity provides notice in a  
14 record of the genetic monitoring to the employee;

15 B. the genetic monitoring is:  
16 (1) required by state or federal law; or  
17 (2) authorized by the employee in accordance  
18 with Section 14 of the Uniform Protection of Genetic  
19 Information in Employment Act;

20 C. the genetic monitoring is in compliance with:  
21 (1) federal genetic monitoring law, including  
22 the federal Occupational Safety and Health Act of 1970, 29  
23 U.S.C. Section 651 et seq., the Federal Mine Safety and Health  
24 Act of 1977, 30 U.S.C. Section 801 et seq., or the federal  
25 Atomic Energy Act of 1954, 42 U.S.C. Section 2011 et seq., and

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1 regulations adopted pursuant to those acts; and

2 (2) the state's genetic monitoring law,  
3 including rules adopted pursuant to the federal Occupational  
4 Safety and Health Act of 1970, 29 U.S.C. Section 651 et seq.;

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

9 E. individually identifiable genetic information is  
10 provided only to one or more of the following:

11 (1) the employee;

12 (2) a health care professional if designated  
13 by the employee; and

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

17 F. except for disclosure pursuant to Paragraph (3)  
18 of Subsection C of this section, genetic information shall not  
19 be disclosed to the employment entity except in an aggregate  
20 form that does not disclose the identity of the employee.

21 **SECTION 11. [NEW MATERIAL] EXCEPTION FOR CERTAIN**  
22 **EMPLOYERS THAT CONDUCT DNA ANALYSES.--**An employer that conducts  
23 DNA analyses for law enforcement purposes at a forensic  
24 laboratory or for the purpose of identifying human remains may  
25 request or require genetic information or genetic testing of an

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1 employee to the extent necessary to analyze DNA identification  
2 markers for quality control to detect sample contamination by  
3 DNA of the employee.

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

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

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

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

20 D. the tribunal grants a protective order to  
21 protect the privacy of the genetic information.

22 SECTION 13. [NEW MATERIAL] REQUIREMENTS FOR GENETIC  
23 TESTING.--An employment entity that provides a genetic test to  
24 an employee or family member of the employee as part of health  
25 or genetic services pursuant to Section 9 of the Uniform

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1 Protection of Genetic Information in Employment Act or for  
2 genetic monitoring pursuant to Section 10 of that act shall:

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

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

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

15 B. unless the individual directs otherwise, require  
16 the testing organization to report the test result to the  
17 individual and any health care professional designated by the  
18 individual;

19 C. unless the individual directs otherwise, provide  
20 genetic counseling for the individual about a test result that  
21 indicates a disease or disorder or increased risk for a disease  
22 or disorder;

23 D. require the destruction of the individual's  
24 biological sample obtained for the test as soon as practicable  
25 after the test is completed, unless retention of the sample is:

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1 (1) knowingly and voluntarily authorized by  
2 the individual in a record signed by the individual;

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

5 (3) ordered by a tribunal; and

6 E. require the destruction or expungement of  
7 information generated from the biological sample other than the  
8 authorized test as soon as practicable after the test is  
9 completed unless retention of the information is:

10 (1) knowingly and voluntarily authorized by  
11 the individual in a record signed by the individual;

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

14 (3) ordered by a tribunal.

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

17 A. Except as otherwise provided by law other than  
18 the Uniform Protection of Genetic Information in Employment  
19 Act, an authorization of an employee or a family member of the  
20 employee for an employment entity to acquire the individual's  
21 genetic information or provide a genetic test shall be knowing  
22 and voluntary and indicated in a record signed by the  
23 individual before the acquisition or test. An employment  
24 entity that receives an authorization may use the genetic  
25 information or analyze a genetic test only in accordance with

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1 the authorization. The authorization shall not expand the  
2 authority of the employment entity to acquire or use genetic  
3 information or to provide genetic testing beyond that permitted  
4 by the Uniform Protection of Genetic Information in Employment  
5 Act. The authorization shall not waive any right of the  
6 individual pursuant to federal law or the law of New Mexico.  
7 The employment entity shall provide a copy of the authorization  
8 to the individual who signed the authorization.

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

14 (1) describe the type of information that will  
15 be acquired;

16 (2) describe the authorized uses of the  
17 information;

18 (3) describe restrictions on disclosure of the  
19 information; and

20 (4) state that the individual is entitled to a  
21 copy of the authorization.

22 C. An authorization for an employment entity to  
23 provide a genetic test of an employee or family member of the  
24 employee pursuant to Section 9 of the Uniform Protection of  
25 Genetic Information in Employment Act or Paragraph (2) of

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1 Subsection B of Section 10 of that act shall:

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

4 (2) inform the individual that the authorized  
5 test will be analyzed only for the purposes specified in the  
6 authorization;

7 (3) explain the benefit of receiving genetic  
8 counseling about the risks and benefits of the test before the  
9 individual authorizes the test;

10 (4) inform the individual that the employment  
11 entity is obligated to provide genetic counseling before the  
12 individual authorizes the test, unless the individual waives  
13 genetic counseling;

14 (5) if the test is part of a genetic  
15 monitoring program, inform the individual that the employment  
16 entity is obligated to pay for genetic counseling before the  
17 individual authorizes the test, unless the individual waives  
18 genetic counseling;

19 (6) inform the individual that the test result  
20 will be reported to the individual and a health care  
21 professional designated by the individual, unless the  
22 individual directs otherwise;

23 (7) explain the benefit of receiving genetic  
24 counseling about a test result that indicates a disease or  
25 disorder or increased risk for a disease or disorder and inform

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1 the individual that the employment entity is obligated to  
2 provide genetic counseling about the test result, unless the  
3 individual waives genetic counseling;

4 (8) if the test is part of a genetic  
5 monitoring program, inform the individual that the employment  
6 entity is obligated to pay for genetic counseling about a test  
7 result that indicates a disease or disorder or increased risk  
8 for a disease or disorder, unless the individual waives genetic  
9 counseling;

10 (9) include an opportunity for the individual  
11 to provide directions in a record about reporting test results  
12 and genetic counseling;

13 (10) inform the individual that the  
14 individual's biological sample will be destroyed as soon as  
15 practicable after the test is completed, unless the individual  
16 authorizes retention of the sample or retention is permitted by  
17 law other than the Uniform Protection of Genetic Information in  
18 Employment Act or otherwise ordered by a tribunal;

19 (11) inform the individual that data generated  
20 in the testing process that are not relevant to the authorized  
21 test will be destroyed or expunged as soon as practicable after  
22 the test is completed, unless the individual authorizes  
23 retention of the information, retention is permitted by law  
24 other than the Uniform Protection of Genetic Information in  
25 Employment Act or otherwise ordered by a tribunal;

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1 (12) describe restrictions on disclosures of  
2 the test result; and

3 (13) state that the individual is entitled to  
4 a copy of the authorization.

5 SECTION 15. [NEW MATERIAL] FORM FOR AUTHORIZATION FOR  
6 ACQUISITION OF GENETIC INFORMATION.--A completed and signed  
7 authorization substantially in the following form satisfies  
8 Subsection B of Section 14 of the Uniform Protection of Genetic  
9 Information in Employment Act.

10 "AUTHORIZATION FOR ACQUISITION OF GENETIC INFORMATION

11 I, \_\_\_\_\_, authorize \_\_\_\_\_  
12 (Printed name) (Name of employment entity)

13 to acquire my genetic information as checked below.

14 PURPOSE FOR PROVIDING GENETIC INFORMATION

15 \_\_\_\_\_ This genetic information is provided for a  
16 voluntary genetic monitoring program conducted by  
17 \_\_\_\_\_.  
18 (Name of employment entity)

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

23 \_\_\_\_\_ This genetic information is provided for  
24 \_\_\_\_\_, a voluntary program offered by  
25 (Name of program)

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1 \_\_\_\_\_ to provide health and  
2 (Name of employment entity)  
3 genetic services.

4 \_\_\_\_\_ may use this information  
5 (Name of employment entity)  
6 only for the following: \_\_\_\_\_.  
7 (Authorized uses)

8 \_\_\_\_\_ This genetic information is provided to \_\_\_\_\_  
9 \_\_\_\_\_ at my initiative and by my  
10 (Name of employment entity)  
11 voluntary submission for the following: \_\_\_\_\_.  
12 (Authorized uses)

13 TYPE OF GENETIC INFORMATION

14 \_\_\_\_\_ Family medical history  
15 Family medical history is information concerning  
16 diseases and disorders of family members and other  
17 relatives.

18 \_\_\_\_\_ My genetic test results: \_\_\_\_\_  
19 (Name of genetic test)  
20 Genetic tests are tests of DNA, RNA, chromosomes or  
21 other material to determine your genetic  
22 characteristics. If \_\_\_\_\_ will  
23 (Name of employment entity)  
24 provide the genetic tests, a separate authorization is  
25 necessary.

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1 NOTICE CONCERNING DISCLOSURE OF YOUR GENETIC INFORMATION

2 If this genetic information is provided for a voluntary  
3 genetic monitoring program or a voluntary program that provides  
4 health and genetic services, only you, a health care  
5 professional whom you designate, and health care professionals  
6 involved in providing the program will have access to your  
7 individual genetic information. Otherwise,

8 \_\_\_\_\_ shall not have access to your

9 (Name of employment entity)

10 genetic information except in an aggregate form that will not  
11 identify you. However, your genetic information may be  
12 disclosed: 1) to certain health researchers; 2) to government  
13 officials investigating compliance with laws protecting the  
14 privacy of genetic information or prohibiting genetic  
15 discrimination; 3) to a public health agency if the information  
16 concerns a life-threatening contagious disease; 4) if expressly  
17 ordered by a court, arbitral tribunal or administrative agency;  
18 or 5) if you request and authorize a disclosure.

19 YOUR LEGAL RIGHTS

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

23 SIGNATURE OF INDIVIDUAL MAKING THIS AUTHORIZATION

24 \_\_\_\_\_."

25 (Signature)

(Date)

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1           SECTION 16.   ~~[NEW MATERIAL]~~ FORM FOR AUTHORIZATION OF  
2 GENETIC TESTING.--A completed and signed authorization  
3 substantially in the following form satisfies Subsection C of  
4 Section 14 of the Uniform Protection of Genetic Information in  
5 Employment Act.

6                           "AUTHORIZATION FOR GENETIC TESTING  
7 LIMITED AUTHORIZATION

8           Only the genetic tests that you authorize on this form  
9 will be performed on your biological sample. These tests are  
10 voluntary.

11 AVAILABILITY OF GENETIC COUNSELING BEFORE SIGNING THIS  
12 AUTHORIZATION

13           Before you complete this authorization, it is highly  
14 recommended that you receive genetic counseling. Genetic  
15 counseling will help you assess your risk for an inherited  
16 condition based on your family medical history and will help  
17 you understand the options for prevention and management of  
18 genetic conditions. It will help you understand and evaluate  
19 the risks, benefits and consequences for you and your family of  
20 having the test(s) listed below.

21 \_\_\_\_\_ will provide [and pay for]

22           (Name of employment entity)  
23 this genetic counseling.

24 PROPOSED GENETIC TESTS

25 \_\_\_\_\_ proposes to provide the

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1 (Name of employment entity)

2 following genetic tests:

3 \_\_\_\_\_ . This test is provided as part of a

4 (Name of test)

5 genetic monitoring program. The purpose of this test is to  
6 monitor the effect of your exposure to \_\_\_\_\_ .

7 (Workplace condition)

8 The result of the test will be used only for the  
9 following: \_\_\_\_\_ .

10 (Authorized uses)

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

12 (Name of test)

13 \_\_\_\_\_ .

14 (Name of health or genetic services program)

15 The result will be used only for the following:

16 \_\_\_\_\_ .

17 (Authorized uses)

18 REPORTING TEST RESULTS AND GENETIC COUNSELING

19 The test results will be reported to you and to a health  
20 care professional whom you designate unless you direct  
21 otherwise. It is highly recommended that you receive genetic  
22 counseling about the test results. Genetic counseling is  
23 important for understanding the test results in the context of  
24 your medical and family history. It can also provide you with  
25 support, informational resources and referrals, as appropriate,



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1 that can help you adapt to the implications of being at risk of  
2 a genetic condition. \_\_\_\_\_ will provide  
3 (Name of employment entity)  
4 [and pay for] genetic counseling about the test results unless  
5 you decline genetic counseling.

6 NOTICE CONCERNING DISCLOSURE OF THE TEST RESULTS

7 Other than the medical professionals involved in providing  
8 this program, \_\_\_\_\_ will not have access  
9 (Name of employment entity)  
10 to the test results of the individuals who authorize this test  
11 except in an aggregate form that will not identify you.

12 However, the test results may be disclosed: 1) to certain  
13 health researchers; 2) to government officials investigating  
14 compliance with laws protecting the privacy of genetic  
15 information or prohibiting genetic discrimination; 3) if  
16 expressly ordered by a court, arbitral tribunal or  
17 administrative agency; or 4) if you request and authorize a  
18 disclosure.

19 DESTRUCTION OF YOUR BIOLOGICAL SAMPLE AND TESTING DATA

20 After the genetic test, your biological sample and data  
21 that are not necessary for the test you authorized will be  
22 destroyed as soon as practicable unless you authorize otherwise  
23 in writing or a court, arbitral tribunal or administrative  
24 agency requires retention of the sample.

25 YOUR LEGAL RIGHTS

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1 By signing this authorization, you do not waive any legal  
2 rights to which you are entitled. You are entitled to a copy  
3 of this authorization.

4 AUTHORIZATION

5 I, \_\_\_\_\_, authorize each genetic test that  
6 (Printed name)

7 I have checked above.

8 CHOOSE ONE:

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

10 \_\_\_ I do not wish to receive test results.

11 CHOOSE ONE:

12 \_\_\_ Report test results to the following health care  
13 professional:

14 Name: \_\_\_\_\_

15 Address: \_\_\_\_\_

16 Phone: \_\_\_\_\_

17 \_\_\_ Do not report test results to a health care professional.

18 SIGNATURE OF INDIVIDUAL MAKING THIS AUTHORIZATION

19 \_\_\_\_\_ ."

20 (Signature)

(Date)

21 SECTION 17. [NEW MATERIAL] PROHIBITION OF USE OF GENETIC  
22 INFORMATION.--

23 A. An employer shall not take an adverse employment  
24 action against an employee as defined in Subparagraph (a) of  
25 Paragraph (1) of Subsection C of Section 2 of the Uniform

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1 Protection of Genetic Information in Employment Act based on  
2 the employee's genetic information, including failing or  
3 refusing to hire, discharging or discriminating against the  
4 employee in regard to compensation or terms, conditions or  
5 privileges of employment.

6 B. An employment agency shall not take an adverse  
7 employment action against an individual based on the  
8 individual's genetic information, including failing or refusing  
9 to refer the individual for employment or discriminating  
10 against the individual.

11 C. A labor organization shall not take an adverse  
12 action against a labor organization member based on the  
13 member's genetic information, including excluding or expelling  
14 the member from membership in the organization or  
15 discriminating against the member.

16 D. An employer, labor organization or labor-  
17 management committee controlling an apprenticeship or a  
18 training or retraining program shall not take an adverse  
19 employment action against an individual based on the  
20 individual's genetic information, including discriminating  
21 against the individual in admission to or employment in the  
22 program.

23 E. A credentialing authority shall not take an  
24 adverse action against an individual based on the individual's  
25 genetic information, including discriminating against the

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1 individual in the provision of credentials.

2 F. An employment entity shall not limit, segregate  
3 or classify an individual, or fail or refuse to refer the  
4 individual for employment, based on the individual's genetic  
5 information in a way that would deprive or tend to deprive the  
6 individual of employment opportunities or otherwise adversely  
7 affect the status of the individual as an employee.

8 G. An employment agency, labor organization, labor-  
9 management training or apprenticeship program or credentialing  
10 authority shall not cause or attempt to cause an employer to  
11 discriminate against an employee in violation of the Uniform  
12 Protection of Genetic Information in Employment Act or a law of  
13 New Mexico other than the Uniform Protection of Genetic  
14 Information in Employment Act.

15 H. An employment entity shall not discriminate  
16 against an employee because the employee:

17 (1) opposed an act or practice made unlawful  
18 by the federal Genetic Information Nondiscrimination Act of  
19 2008, 42 U.S.C. Section 2000ff et seq., or the Uniform  
20 Protection of Genetic Information in Employment Act; or

21 (2) made a charge, testified, assisted or  
22 participated in any manner in an investigation, proceeding or  
23 hearing pursuant to the federal Genetic Information  
24 Nondiscrimination Act of 2008, 42 U.S.C. Section 2000ff et  
25 seq., or the Uniform Protection of Genetic Information in

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1 Employment Act.

2 SECTION 18. [NEW MATERIAL] EMPLOYEE ACCESS TO GENETIC  
3 INFORMATION.--An employee may inspect, request correction of or  
4 obtain a copy of any record of an employment entity that  
5 contains genetic information of the employee. The employment  
6 entity shall permit the employee to provide genetic information  
7 in a signed record to supplement or correct genetic information  
8 in the employment entity's record.

9 SECTION 19. [NEW MATERIAL] CONFIDENTIALITY AND RETENTION  
10 OF GENETIC INFORMATION.--Except for genetic information that an  
11 employment entity obtains in aggregate form pursuant to Section  
12 9 of the Uniform Protection of Genetic Information in  
13 Employment Act or pursuant to Section 10 of that act, the  
14 following rules apply:

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

17 B. if an employment entity possesses a record of an  
18 employee's genetic information, the employment entity shall  
19 keep the record separate from the employee's personnel file;  
20 and

21 C. Subsection B of this section is satisfied if an  
22 employment entity keeps the genetic information in the record  
23 in which it maintains confidential medical information subject  
24 to the federal Americans with Disabilities Act of 1990, Section  
25 102(d)(3)(B), 42 U.S.C. Section 12112(d)(3)(B).

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1           SECTION 20.   ~~[NEW MATERIAL]~~ DISCLOSURE OF GENETIC

2 INFORMATION.--

3           A. Except as otherwise permitted in Subsection B of  
4 this section, an employment entity shall not disclose genetic  
5 information of an employee or a family member of the employee.

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

8                   (1) to the employee or, if the genetic  
9 information is that of a family member of the employee, to the  
10 family member when authorized in a record signed by the  
11 employee or family member;

12                   (2) to a person that the employee or, if the  
13 genetic information is that of a family member, the family  
14 member has designated in an authorization pursuant to  
15 Subsection D of this section;

16                   (3) to an occupational or other health  
17 researcher if the research is conducted in compliance with  
18 federal department of health and human services regulations on  
19 the protection of human research subjects, 45 C.F.R. Part 46;

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

21                   (5) in response to an official request from a  
22 government official who is investigating compliance with the  
23 Uniform Protection of Genetic Information in Employment Act or  
24 with the federal Genetic Information Nondiscrimination Act of  
25 2008, 42 U.S.C. Section 2000ff et seq., if the information is

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1 responsive to the official's request;

2 (6) to the extent that the disclosure is made  
3 to comply with the certification provisions of Section 103 of  
4 the federal Family and Medical Leave Act of 1993, 29 U.S.C.  
5 Section 2613;

6 (7) to a public health agency when the genetic  
7 information is family medical history that concerns a  
8 contagious disease that presents an imminent risk of death or  
9 life-threatening illness; or

10 (8) in aggregate form in connection with  
11 health or genetic services pursuant to Section 9 of the Uniform  
12 Protection of Genetic Information in Employment Act or genetic  
13 monitoring pursuant to Section 10 of that act.

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

21 D. An authorization for an employment entity to  
22 disclose genetic information of an employee or a family member  
23 of an employee pursuant to Paragraph (2) of Subsection B of  
24 this section shall be knowing and voluntary and indicated in a  
25 record signed by the employee or family member of the employee.

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1 The authorization shall:

2 (1) describe the genetic information to be  
3 disclosed;

4 (2) identify the person to whom the genetic  
5 information is to be disclosed;

6 (3) indicate the duration of the  
7 authorization; and

8 (4) state that the individual is entitled to a  
9 copy of the authorization.

10 E. An employment entity that receives an  
11 authorization may disclose the genetic information only in  
12 accordance with the authorization. The authorization shall not  
13 expand the authority of the employment entity to disclose  
14 genetic information beyond that permitted by the Uniform  
15 Protection of Genetic Information in Employment Act. The  
16 authorization shall not waive any right of the employee or  
17 family member of the employee pursuant to federal law or the  
18 law of New Mexico. The employment entity shall provide a copy  
19 of the authorization to the employee or family member who  
20 signed the authorization.

21 SECTION 21. [NEW MATERIAL] FORM FOR AUTHORIZATION FOR  
22 DISCLOSURE OF GENETIC INFORMATION.--A completed and signed  
23 authorization substantially in the following form satisfies the  
24 authorization requirement in Subsection D of Section 20 of the  
25 Uniform Protection of Genetic Information in Employment Act.

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1 "AUTHORIZATION FOR DISCLOSURE OF GENETIC INFORMATION

2 I, \_\_\_\_\_, authorize \_\_\_\_\_

3 (Printed name) (Name of employment entity)

4 to disclose my following genetic information

5 \_\_\_\_\_ to

6 (Specific description of genetic information)

7 \_\_\_\_\_.

8 (Identity of person or entity to receive the disclosure)

9 CHOOSE ONE:

10 \_\_\_\_\_ This authorization is for one disclosure only.

11 \_\_\_\_\_ This authorization continues in effect until I revoke  
12 it.

13 \_\_\_\_\_ This authorization continues in effect until \_\_\_\_\_.

14 (Date)

15 \_\_\_\_\_."

16 (Signature)

(Date)

17 SECTION 22. [NEW MATERIAL] RELATIONSHIP TO HEALTH

18 REGULATIONS.--The Uniform Protection of Genetic Information in  
19 Employment Act does not prevent a covered entity under the  
20 regulations issued by the federal secretary of health and human  
21 services pursuant to Section 264(c) of the federal Health  
22 Insurance Portability and Accountability Act of 1996, 42 U.S.C.  
23 Section 1320d-2 note, from using or disclosing health  
24 information that is authorized for a covered entity by the  
25 regulations.

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1           **SECTION 23. [NEW MATERIAL] REMEDIES.--**

2           A. A person aggrieved by a violation of the Uniform  
3 Protection of Genetic Information in Employment Act has a cause  
4 of action for money damages or other relief.

5           B. A person may seek remedies provided by law other  
6 than the Uniform Protection of Genetic Information in  
7 Employment Act. Exhaustion of administrative remedies is not  
8 required before seeking relief for a violation of the Uniform  
9 Protection of Genetic Information in Employment Act.

10          C. A tribunal may allow a prevailing employee  
11 reasonable attorney fees and costs.

12           **SECTION 24. [NEW MATERIAL] NO CAUSE OF ACTION FOR**  
13 **DISPARATE IMPACT.--**Notwithstanding any other provision of the  
14 Uniform Protection of Genetic Information in Employment Act,  
15 "disparate impact", as that term is used in 42 U.S.C. Section  
16 2000e-2(k), does not establish a cause of action under the  
17 Uniform Protection of Genetic Information in Employment Act.

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

24           **SECTION 26. [NEW MATERIAL] RELATION TO ELECTRONIC**  
25 **SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.--**The Uniform

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1 Protection of Genetic Information in Employment Act modifies,  
2 limits and supersedes the federal Electronic Signatures in  
3 Global and National Commerce Act, but it does not modify, limit  
4 or supersede Section 101(c) of that act or authorize electronic  
5 delivery of any of the notices described in Section 103(b) of  
6 that act.

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

9 "24-21-3. GENETIC ANALYSIS PROHIBITED WITHOUT INFORMED  
10 CONSENT--EXCEPTIONS.--

11 A. Except as provided in Subsection C of this  
12 section, no person shall obtain genetic information or samples  
13 for genetic analysis from a person without first obtaining  
14 informed and written consent from the person or the person's  
15 authorized representative.

16 B. Except as provided in Subsection C of this  
17 section, genetic analysis of a person or collection, retention,  
18 transmission or use of genetic information without the informed  
19 and written consent of the person or the person's authorized  
20 representative is prohibited.

21 C. A person's DNA or genetic information or the  
22 results of the person's genetic analysis may be obtained,  
23 retained, transmitted or used without the person's written and  
24 informed consent pursuant to federal or state law or  
25 regulations only:

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

3 (2) if the person has been convicted of a  
4 felony, for purposes of maintaining a DNA database for law  
5 enforcement purposes;

6 (3) to identify deceased persons;

7 (4) to establish parental identity;

8 (5) to screen newborns;

9 (6) if the DNA, genetic information or results  
10 of genetic analysis are not identified with the person or  
11 person's family members;

12 (7) by a court for determination of damage  
13 awards pursuant to the Genetic Information Privacy Act;

14 (8) by medical repositories or registries;

15 (9) for the purpose of medical or scientific  
16 research and education, including retention of gene products,  
17 genetic information or genetic analysis if the identity of the  
18 person or person's family members is not disclosed; [ø]

19 (10) for the purpose of emergency medical  
20 treatment consistent with applicable law; or

21 (11) as provided by the Uniform Protection of  
22 Genetic Information in Employment Act.

23 D. Actions of an insurer and third parties dealing  
24 with an insurer in the ordinary course of conducting and  
25 administering the business of life, disability income or long-

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1 term care insurance are exempt from the provisions of this  
2 section if the use of genetic analysis or genetic information  
3 for underwriting purposes is based on sound actuarial  
4 principles or related to actual or reasonably anticipated  
5 experience. However, before or at the time of collecting  
6 genetic information for use in conducting and administering the  
7 business of life, disability income or long-term care  
8 insurance, the insurer shall notify in writing an applicant for  
9 insurance or the insured that the information may be used,  
10 transmitted or retained solely for the purpose of conducting  
11 and administering the business of life, disability income or  
12 long-term care insurance.

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

21 **SECTION 28. EFFECTIVE DATE.**--The effective date of the  
22 provisions of this act is January 1, 2014.