

FILED FEB 17 1992

SENATE FILE 2145
BY RUNNING

Passed Senate, Date 3/13/92 (p. 761) Passed House, Date _____
Vote: Ayes 38 Nays 8 Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the use of genetic testing in employment
2 situations by employers, employment agencies, labor
3 organizations, and licensing agencies, and providing
4 penalties.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

SF 2145

1 Section 1. NEW SECTION. 729.6 GENETIC TESTING.

2 1. As used in this section, unless the context otherwise
3 requires:

4 a. "Employer" means the state of Iowa, or any political
5 subdivision, board, commission, department, institution, or
6 school district, and every other person employing employees
7 within the state.

8 b. "Employment agency" means a person, including the
9 state, who regularly undertakes to procure employees or
10 opportunities for employment for any other person.

11 c. "Genetic testing" means a test of a person's genes,
12 gene products, or chromosomes, for abnormalities or
13 deficiencies, including carrier status, that are linked to
14 physical or mental disorders or impairments, or that indicate
15 a susceptibility to illness, disease, impairment, or other
16 disorders, whether physical or mental, or that demonstrate
17 genetic or chromosomal damage due to environmental factors.

18 d. "Labor organization" means any organization which
19 exists for the purpose in whole or in part of collective
20 bargaining, or dealing with employers concerning grievances,
21 terms, or conditions of employment, or of other mutual aid or
22 protection in connection with employment.

23 e. "Licensing agency" means a board, commission,
24 committee, council, department, examining board, or officer,
25 except a judicial officer, in the state, or in a city, county,
26 township, or local government, authorized to grant, deny,
27 renew, revoke, suspend, annul, withdraw, or amend a license or
28 certificate of registration.

29 f. "Unfair genetic testing" means any test or testing
30 procedure that violates this section.

31 2. An employer, employment agency, labor organization,
32 licensing agency, or its employees, agents, or members shall
33 not directly or indirectly do any of the following:

34 a. Solicit, require, or administer a genetic test to a
35 person as a condition of employment, preemployment

1 application, labor organization membership, or licensure.

2 b. Affect the terms, conditions, or privileges of
3 employment, preemployment application, labor organization
4 membership, or licensure, or terminate the employment, labor
5 organization membership, or licensure of any person who
6 obtains a genetic test.

7 3. A person shall not sell to or interpret for an
8 employer, employment agency, labor organization, or licensing
9 agency, or its employees, agents, or members, a genetic test
10 of an employee, labor organization member, or licensee, or of
11 a prospective employee, member, or licensee.

12 4. An agreement between a person and an employer,
13 prospective employer, employment agency, labor organization,
14 or licensing agency, or its employees, agents, or members
15 offering the person employment, labor organization membership,
16 licensure, or any pay or benefit in return for taking a
17 genetic test is prohibited.

18 5. An employee, labor organization member, or licensee, or
19 prospective employee, member, or licensee who acted in good
20 faith shall not be discharged, disciplined, or discriminated
21 against in any manner for filing a complaint or testifying in
22 any proceeding or action involving violations of this section.
23 An employee, labor organization member, or licensee, or
24 prospective employee, member, or licensee discharged,
25 disciplined, or otherwise discriminated against in violation
26 of this section shall be compensated by the employer,
27 employment agency, labor organization, or licensing agency in
28 the amount of any loss of wages and benefits arising out of
29 the discrimination.

30 6. This section may be enforced through a civil action.

31 a. A person who violates this section or who aids in the
32 violation of this section is liable to an aggrieved employee,
33 labor organization member, or licensee, or aggrieved
34 prospective employee, member, or licensee, for affirmative
35 relief including reinstatement or hiring, with or without back

1 pay, membership, licensing, or any other equitable relief as
2 the court deems appropriate including attorney fees and court
3 costs.

4 b. If a person commits, is committing, or proposes to
5 commit, an act in violation of this section, an injunction may
6 be granted through an action in district court to prohibit the
7 person from continuing such acts. The action for injunctive
8 relief may be brought by an aggrieved employee, labor
9 organization member, or licensee, or aggrieved prospective
10 employee, member, or licensee, the county attorney, or the
11 attorney general.

12 A person who in good faith brings an action under this
13 subsection alleging that an employer, employment agency, labor
14 organization, or licensing agency has required or requested a
15 genetic test in violation of this section shall establish that
16 sufficient evidence exists upon which a reasonable person
17 could find that a violation has occurred. Upon proof that
18 sufficient evidence exists upon which a finding could be made
19 that a violation has occurred as required under this
20 paragraph, the employer, employment agency, labor
21 organization, or licensing agency has the burden of proving
22 that the requirements of this section were met.

23 7. A person who violates this section commits a serious
24 misdemeanor.

25 EXPLANATION

26 This bill prohibits genetic testing by employers, labor
27 organizations, employment agencies, and licensing agencies as
28 a condition of employment, preemployment application, labor
29 organization membership, or licensure. Employers, labor
30 organizations, employment agencies, and licensing agencies
31 shall not solicit or administer a genetic test to an employee,
32 labor organization member, or licensee, or prospective
33 employee, member, or licensee, or use the results from a
34 genetic test to affect the terms, conditions, or privileges of
35 employment, preemployment application, labor organization

1 membership, or licensure.

2 The bill also prohibits a person from selling to or
3 interpreting for an employer, employment agency, labor
4 organization, or licensing agent a genetic test of an
5 employee, labor organization member, licensee, or prospective
6 employee, member, or licensee. An agreement between a person
7 and an employer, prospective employer, labor organization,
8 employment agency, or licensing agency for employment, pay, or
9 benefit for taking a genetic test is prohibited. The bill
10 permits enforcement through civil action. A person who
11 violates the bill commits a serious misdemeanor.

- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31
- 32
- 33
- 34
- 35

SENATE FILE 2145

S-5096

- 1 Amend Senate File 2145 as follows:
- 2 1. Page 3, by striking lines 23 and 24.
- 3 2. Title page, line 4, by striking the word
- 4 "penalties" and inserting the following: "civil
- 5 remedies".

By BY COMMITTEE ON BUSINESS AND
LABOR RELATIONS
RICHARD RUNNING, Chairperson

S-5096 FILED FEBRUARY 25, 1992

adopted (p. 761) 3/13

SENATE FILE 2145

S-5227

- 1 Amend Senate File 2145 as follows:
- 2 1. Page 2, line 7, by striking the word "A" and
- 3 inserting the following: "Except as provided in
- 4 subsection 6A, a".
- 5 2. Page 3, by inserting after line 22, the
- 6 following:
- 7 "6A. This section does not prohibit the genetic
- 8 testing of an employee who requests a genetic test and
- 9 who provides written and informed consent to taking a
- 10 genetic test for any of the following purposes:
- 11 a. Investigating a workers' compensation claim
- 12 under chapters 85, 85A, 85B, and 86.
- 13 b. Determining the employee's susceptibility or
- 14 level of exposure to potentially toxic chemicals or
- 15 potentially toxic substances in the workplace, if the
- 16 employer does not terminate the employee, or take any
- 17 other action that adversely affects any term,
- 18 condition, or privilege of the employee's employment
- 19 as a result of the genetic test."
- 20 3. By renumbering as necessary.

By RICHARD RUNNING

S-5227 FILED MARCH 13, 1992

ADOPTED (*p. 761*)

File 3/13, No Pass 3/25

SENATE FILE 2145
BY RUNNING

(AS AMENDED AND PASSED BY THE SENATE MARCH 13, 1992)

_____ - New Language by the Senate
* - Language Stricken by the Senate

Passed Senate, Date 3/13/92 (p. 761) Passed House, Date 4/2/92 (p. 999)
Vote: Ayes 38 Nays 8 Vote: Ayes 64 Nays 35
Approved April 14, 1992 (p. 1288)

A BILL FOR

1 An Act relating to the use of genetic testing in employment
2 situations by employers, employment agencies, labor
3 organizations, and licensing agencies, and providing civil
4 remedies.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22

S.F. 2145

1 Section 1. NEW SECTION. 729.6 GENETIC TESTING.

2 1. As used in this section, unless the context otherwise
3 requires:

4 a. "Employer" means the state of Iowa, or any political
5 subdivision, board, commission, department, institution, or
6 school district, and every other person employing employees
7 within the state.

8 b. "Employment agency" means a person, including the
9 state, who regularly undertakes to procure employees or
10 opportunities for employment for any other person.

11 c. "Genetic testing" means a test of a person's genes,
12 gene products, or chromosomes, for abnormalities or
13 deficiencies, including carrier status, that are linked to
14 physical or mental disorders or impairments, or that indicate
15 a susceptibility to illness, disease, impairment, or other
16 disorders, whether physical or mental, or that demonstrate
17 genetic or chromosomal damage due to environmental factors.

18 d. "Labor organization" means any organization which
19 exists for the purpose in whole or in part of collective
20 bargaining, or dealing with employers concerning grievances,
21 terms, or conditions of employment, or of other mutual aid or
22 protection in connection with employment.

23 e. "Licensing agency" means a board, commission,
24 committee, council, department, examining board, or officer,
25 except a judicial officer, in the state, or in a city, county,
26 township, or local government, authorized to grant, deny,
27 renew, revoke, suspend, annul, withdraw, or amend a license or
28 certificate of registration.

29 f. "Unfair genetic testing" means any test or testing
30 procedure that violates this section.

31 2. An employer, employment agency, labor organization,
32 licensing agency, or its employees, agents, or members shall
33 not directly or indirectly do any of the following:

34 a. Solicit, require, or administer a genetic test to a
35 person as a condition of employment, preemployment

1 application, labor organization membership, or licensure.

2 b. Affect the terms, conditions, or privileges of
3 employment, preemployment application, labor organization
4 membership, or licensure, or terminate the employment, labor
5 organization membership, or licensure of any person who
6 obtains a genetic test.

7 3. Except as provided in subsection 6A, a person shall not
8 sell to or interpret for an employer, employment agency, labor
9 organization, or licensing agency, or its employees, agents,
10 or members, a genetic test of an employee, labor organization
11 member, or licensee, or of a prospective employee, member, or
12 licensee.

13 4. An agreement between a person and an employer,
14 prospective employer, employment agency, labor organization,
15 or licensing agency, or its employees, agents, or members
16 offering the person employment, labor organization membership,
17 licensure, or any pay or benefit in return for taking a
18 genetic test is prohibited.

19 5. An employee, labor organization member, or licensee, or
20 prospective employee, member, or licensee who acted in good
21 faith shall not be discharged, disciplined, or discriminated
22 against in any manner for filing a complaint or testifying in
23 any proceeding or action involving violations of this section.
24 An employee, labor organization member, or licensee, or
25 prospective employee, member, or licensee discharged,
26 disciplined, or otherwise discriminated against in violation
27 of this section shall be compensated by the employer,
28 employment agency, labor organization, or licensing agency in
29 the amount of any loss of wages and benefits arising out of
30 the discrimination.

31 6. This section may be enforced through a civil action.

32 a. A person who violates this section or who aids in the
33 violation of this section is liable to an aggrieved employee,
34 labor organization member, or licensee, or aggrieved
35 prospective employee, member, or licensee, for affirmative

1 relief including reinstatement or hiring, with or without back
2 pay, membership, licensing, or any other equitable relief as
3 the court deems appropriate including attorney fees and court
4 costs.

5 b. If a person commits, is committing, or proposes to
6 commit, an act in violation of this section, an injunction may
7 be granted through an action in district court to prohibit the
8 person from continuing such acts. The action for injunctive
9 relief may be brought by an aggrieved employee, labor
10 organization member, or licensee, or aggrieved prospective
11 employee, member, or licensee, the county attorney, or the
12 attorney general.

13 A person who in good faith brings an action under this
14 subsection alleging that an employer, employment agency, labor
15 organization, or licensing agency has required or requested a
16 genetic test in violation of this section shall establish that
17 sufficient evidence exists upon which a reasonable person
18 could find that a violation has occurred. Upon proof that
19 sufficient evidence exists upon which a finding could be made
20 that a violation has occurred as required under this
21 paragraph, the employer, employment agency, labor
22 organization, or licensing agency has the burden of proving
23 that the requirements of this section were met.

24 6A. This section does not prohibit the genetic testing of
25 an employee who requests a genetic test and who provides
26 written and informed consent to taking a genetic test for any
27 of the following purposes:

28 a. Investigating a workers' compensation claim under
29 chapters 85, 85A, 85B, and 86.

30 b. Determining the employee's susceptibility or level of
31 exposure to potentially toxic chemicals or potentially toxic
32 substances in the workplace, if the employer does not
33 terminate the employee, or take any other action that
34 adversely affects any term, condition, or privilege of the
35 employee's employment as a result of the genetic test.

SENATE FILE 2145

AN ACT
RELATING TO THE USE OF GENETIC TESTING IN EMPLOYMENT SITUATIONS
BY EMPLOYERS, EMPLOYMENT AGENCIES, LABOR ORGANIZATIONS,
AND LICENSING AGENCIES, AND PROVIDING CIVIL REMEDIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. NEW SECTION. 729.6 GENETIC TESTING.

1. As used in this section, unless the context otherwise requires:
 - a. "Employer" means the state of Iowa, or any political subdivision, board, commission, department, institution, or school district, and every other person employing employees within the state.
 - b. "Employment agency" means a person, including the state, who regularly undertakes to procure employees or opportunities for employment for any other person.
 - c. "Genetic testing" means a test of a person's genes, gene products, or chromosomes, for abnormalities or deficiencies, including carrier status, that are linked to physical or mental disorders or impairments, or that indicate a susceptibility to illness, disease, impairment, or other disorders, whether physical or mental, or that demonstrate genetic or chromosomal damage due to environmental factors.
 - d. "Labor organization" means any organization which exists for the purpose in whole or in part of collective bargaining, or dealing with employers concerning grievances, terms, or conditions of employment, or of other mutual aid or protection in connection with employment.
 - e. "Licensing agency" means a board, commission, committee, council, department, examining board, or officer, except a judicial officer, in the state, or in a city, county, township, or local government, authorized to grant, deny,

renew, revoke, suspend, annul, withdraw, or amend a license or certificate of registration.

f. "Unfair genetic testing" means any test or testing procedure that violates this section.

2. An employer, employment agency, labor organization, licensing agency, or its employees, agents, or members shall not directly or indirectly do any of the following:

- a. Solicit, require, or administer a genetic test to a person as a condition of employment, preemployment application, labor organization membership, or licensure.

- b. Affect the terms, conditions, or privileges of employment, preemployment application, labor organization membership, or licensure, or terminate the employment, labor organization membership, or licensure of any person who obtains a genetic test.

3. Except as provided in subsection 6A, a person shall not sell to or interpret for an employer, employment agency, labor organization, or licensing agency, or its employees, agents, or members, a genetic test of an employee, labor organization member, or licensee, or of a prospective employee, member, or licensee.

4. An agreement between a person and an employer, prospective employer, employment agency, labor organization, or licensing agency, or its employees, agents, or members offering the person employment, labor organization membership, licensure, or any pay or benefit in return for taking a genetic test is prohibited.

5. An employee, labor organization member, or licensee, or prospective employee, member, or licensee who acted in good faith shall not be discharged, disciplined, or discriminated against in any manner for filing a complaint or testifying in any proceeding or action involving violations of this section. An employee, labor organization member, or licensee, or prospective employee, member, or licensee discharged, disciplined, or otherwise discriminated against in violation

of this section shall be compensated by the employer, employment agency, labor organization, or licensing agency in the amount of any loss of wages and benefits arising out of the discrimination.

6. This section may be enforced through a civil action.

a. A person who violates this section or who aids in the violation of this section is liable to an aggrieved employee, labor organization member, or licensee, or aggrieved prospective employee, member, or licensee, for affirmative relief including reinstatement or hiring, with or without back pay, membership, licensing, or any other equitable relief as the court deems appropriate including attorney fees and court costs.

b. If a person commits, is committing, or proposes to commit, an act in violation of this section, an injunction may be granted through an action in district court to prohibit the person from continuing such acts. The action for injunctive relief may be brought by an aggrieved employee, labor organization member, or licensee, or aggrieved prospective employee, member, or licensee, the county attorney, or the attorney general.

A person who in good faith brings an action under this subsection alleging that an employer, employment agency, labor organization, or licensing agency has required or requested a genetic test in violation of this section shall establish that sufficient evidence exists upon which a reasonable person could find that a violation has occurred. Upon proof that sufficient evidence exists upon which a finding could be made that a violation has occurred as required under this paragraph, the employer, employment agency, labor organization, or licensing agency has the burden of proving that the requirements of this section were met.

6A. This section does not prohibit the genetic testing of an employee who requests a genetic test and who provides written and informed consent to taking a genetic test for any of the following purposes:

a. Investigating a workers' compensation claim under chapters 85, 85A, 85B, and 86.

b. Determining the employee's susceptibility or level of exposure to potentially toxic chemicals or potentially toxic substances in the workplace, if the employer does not terminate the employee, or take any other action that adversely affects any term, condition, or privilege of the employee's employment as a result of the genetic test.

MICHAEL E. GRONSTAL
President of the Senate

ROBERT C. ARNOULD
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2145, Seventy-fourth General Assembly.

JOHN F. DWYER
Secretary of the Senate

Approved *April 14*, 1992

TERRY E. BRANSTAD
Governor