

HB0866/783629/1

BY: Economic Matters Committee

AMENDMENTS TO HOUSE BILL 866
(First Reading File Bill)

AMENDMENT NO.1

On page 1, in line 2, strike “**Commercial Law – Consumer Protection –**”; in the same line, after “**Privacy**” insert “**– Consumer Protection and Forensic Genealogy**”; in line 9, after “agencies;” insert “altering the direct-to-consumer or publicly available open-data personal genomics databases that may be used to conduct forensic genetic genealogical DNA analysis and search to require that the databases seek express consent from their service users regarding the substance of a certain notice;”; and after line 21, insert:

“BY repealing and reenacting, without amendments,

Article – Criminal Procedure

Section 17–101(a), (c), (e), and (g) and 17–102(a)

Annotated Code of Maryland

(2018 Replacement Volume and 2021 Supplement)

BY adding to

Article – Criminal Procedure

Section 17–101(c–1)

Annotated Code of Maryland

(2018 Replacement Volume and 2021 Supplement)

BY repealing and reenacting, with amendments,

Article – Criminal Procedure

Section 17–102(d) and 17–103(a)(4)

Annotated Code of Maryland

(2018 Replacement Volume and 2021 Supplement)”.

AMENDMENT NO. 2

On page 3, in line 4, after “(D)” insert “(1)”; in lines 6 and 8, strike “(1)” and “(2)”, respectively, and substitute “(I)” and “(II)”, respectively; in line 8, after “DATA” insert “THAT RESULTED FROM A DIRECT-TO-CONSUMER GENETIC TESTING PRODUCT OR SERVICE THAT WAS”; after line 9, insert:

“(2) “DIRECT-TO-CONSUMER GENETIC TESTING COMPANY” DOES NOT INCLUDE AN ENTITY ONLY WHEN THE ENTITY IS ENGAGED IN COLLECTING, ANALYZING, RETAINING, OR DISCLOSING GENETIC DATA OR BIOLOGICAL SAMPLES IN THE CONTEXT OF RESEARCH, AS DEFINED IN 45 C.F.R. 164.501, CONDUCTED IN ACCORDANCE WITH:

(I) THE FEDERAL POLICY FOR THE PROTECTION OF HUMAN SUBJECTS ESTABLISHED IN 45 C.F.R. PART 46;

(II) THE GOOD CLINICAL PRACTICE GUIDELINES ISSUED BY THE INTERNATIONAL COUNCIL FOR HARMONISATION; OR

(III) THE U.S. FOOD AND DRUG ADMINISTRATION PROTECTION OF HUMAN SUBJECTS UNDER 21 C.F.R. PARTS 50 AND 56.”;

in line 22, strike “AND”; after line 22, insert:

“(III) INFORMATION EXTRAPOLATED, DERIVED, OR INFERRED FROM THE ANALYSIS OF RAW SEQUENCE DATA; AND”;

in line 23, strike “(III)” and substitute “(IV)”; and in line 30, after the second “DATA” insert “WHEN USED FOR RESEARCH PROJECTS”.

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On page 4, in line 9, strike the colon; in line 10, strike “(1)”; in the same line, strike “PROTECTED” and substitute “PROTECTED”; and strike beginning with the semicolon in line 12 down through “ARTICLE” in line 16.

On page 6, in line 24, after the second “INSURANCE” insert “, DISABILITY INSURANCE”.

AMENDMENT NO. 3

On page 7, after line 9, insert:

“Article – Criminal Procedure

17–101.

(a) In this title the following words have the meanings indicated.

(c) “Direct-to-consumer genetic genealogy services” means genetic genealogy services that are offered by private companies directly to members of the public and law enforcement agencies rather than through clinical health care providers, typically via customer access to secure online websites.

(C-1) “EXPRESS CONSENT” HAS THE MEANING STATED IN § 14-4401 OF THE COMMERCIAL LAW ARTICLE.

(e) “Forensic genetic genealogical DNA analysis and search” or “FGGS” means:

(1) the forensic genetic genealogical DNA analysis of biological material using SNP or other sequencing techniques to develop an FG profile;

(Over)

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(2) a subsequent search using the FGG profile in a publicly available open-data personal genomics database or a direct-to-consumer genetic genealogy service to find individuals related to the source of the FGG profile; and

(3) a genealogical search using public records and other lawful means to obtain information in accordance with this title.

(g) “Publicly available open-data personal genomics database” means a database in which persons voluntarily submit their genomics data or genetic profiles, typically processed through direct-to-consumer genetic genealogy services, for the purposes of comparison or searching against the genetic profiles of other individuals to evaluate potential familial relationships between the reference sample and other service user samples.

17-102.

(a) (1) FGGS may not be initiated without judicial authorization and without certifying before the court that the forensic sample and the criminal case satisfy the criteria set forth in this section.

(2) If an FGGS is certified before a court in accordance with this section, the court shall authorize the initiation of the FGGS.

(d) FGGS may only be conducted using a direct-to-consumer or publicly available open-data personal genomics database that:

(1) provides explicit notice to its service users and the public that law enforcement may use its service sites to investigate crimes or to identify human remains; and

(2) seeks acknowledgement and EXPRESS consent from its service users regarding the substance of the notice described in item (1) of this subsection.

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17–103.

(a) A defendant in a criminal case charged with a crime of violence under § 14–101 of the Criminal Law Article or a defendant convicted of a crime of violence under § 14–101 of the Criminal Law Article and seeking postconviction DNA testing is entitled to seek judicial authorization for an FGGS by filing an affidavit with a trial court or postconviction court certifying that:

(4) an FGGS shall only be conducted using a direct-to-consumer or publicly available open-data personal genomics database that:

(i) provides explicit notice to its service users and the public that law enforcement may use its service sites to investigate crimes or to identify human remains; and

(ii) seeks acknowledgment and EXPRESS consent from its service users regarding the substance of the notice described in item (i) of this paragraph;”.