S. 1053

To prohibit discrimination on the basis of genetic information with respect to health insurance and employment.

IN THE SENATE OF THE UNITED STATES

MAY 13, 2003

Ms. SNOWE (for herself, Mr. FRIST, Mr. JEFFORDS, Mr. ENZI, Ms. COLLINS, Mr. HAGEL, Mr. DEWINE, and Mr. GREGG) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To prohibit discrimination on the basis of genetic information with respect to health insurance and employment.


1. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1. SHORT TITLE.

This Act may be cited as the “Genetic Information Nondiscrimination Act of 2003”.


TITLE I—GENETIC NON-DISCRIMINATION IN HEALTH INSURANCE

SEC. 101. AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

(a) Prohibition of Health Discrimination on the Basis of Genetic Information or Genetic Services.—

(1) No enrollment restriction for genetic services.—Section 702(a)(1)(F) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1182(a)(1)(F)) is amended by inserting before the period the following: “(including information about a request for or receipt of genetic services)”.

(2) No discrimination in group premiums based on genetic information.—Section 702(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1182(b)) is amended by adding at the end the following:

“(3) No discrimination in group premiums based on genetic information.—For purposes of this section, a group health plan, or a health insurance issuer offering group health insurance coverage in connection with a group health plan, shall
not adjust premium or contribution amounts for a
group on the basis of genetic information concerning
an individual in the group or a family member of the
individual (including information about a request for
or receipt of genetic services).

(b) LIMITATIONS ON GENETIC TESTING AND THE
COLLECTION OF GENETIC INFORMATION.—Section 702 of
the Employee Retirement Income Security Act of 1974
(29 U.S.C. 1182) is amended by adding at the end the
following:

“(c) GENETIC TESTING.—

“(1) LIMITATION ON REQUESTING OR REQUIR-
ING GENETIC TESTING.—A group health plan, or a
health insurance issuer offering health insurance
coverage in connection with a group health plan,
shall not request or require an individual or a family
member of such individual to undergo a genetic test.

“(2) RULE OF CONSTRUCTION.—Nothing in
this part shall be construed to limit the authority of
a health care professional, who is providing health
care services with respect to an individual or who is
acting on behalf of a group health plan or a health
insurance issuer, to request that such individual or
a family member of such individual undergo a ge-
netic test. Such a health care professional shall not
require that such individual or family member un-
dergo a genetic test.

“(d) **Compliance With Certain Confidentiality Standards With Respect to Genetic Information.**—With respect to the use or disclosure of genetic information by a group health plan, or a health insurance issuer offering health insurance coverage in connection with a group health plan, such information shall be deemed to be protected health information for purposes of, and shall be subject to, the standards promulgated by the Secretary of Health and Human Services under—

“(1) part C of title XI of the Social Security Act (42 U.S.C. 1320d et seq.); or

“(2) section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191; 110 Stat. 2033).

“(e) **Collection of Genetic Information.**—

“(1) Limitation on Requesting or Requiring Genetic Information.—Except as provided in paragraph (2), a group health plan, or a health insurance issuer offering health insurance coverage in connection with a group health plan, shall not re-
quest or require genetic information concerning an individual or a family member of the individual (in-
including information about a request for or receipt of genetic services).

“(2) INFORMATION NEEDED FOR TREATMENT, PAYMENT, AND HEALTH CARE OPERATIONS.—Notwithstanding paragraph (1), a group health plan, or a health insurance issuer offering health insurance coverage in connection with a group health plan, that provides health care items and services to an individual may request genetic information concerning such individual or dependent for purposes of treatment, payment, or health care operations in accordance with the standards for protected health information described in subsection (d) to the extent that the use of such information is otherwise consistent with this section.

“(3) FAILURE TO PROVIDE NECESSARY INFORMATION.—If an individual or dependent refuses to provide the information requested under paragraph (2), and such information is for treatment, payment, or health care operations relating to the individual, the group health plan or health insurance issuer requesting such information shall not be required to provide coverage for the items, services, or treatments with respect to which the requested information relates in any action under part 5.”.
(c) DEFINITIONS.—Section 733(d) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1191b(d)) is amended by adding at the end the following:

“(5) FAMILY MEMBER.—The term ‘family member’ means with respect to an individual—

“(A) the spouse of the individual;

“(B) a dependent child of the individual, including a child who is born to or placed for adoption with the individual; and

“(C) all other individuals related by blood to the individual or the spouse or child described in subparagraph (A) or (B).

“(6) GENETIC INFORMATION.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘genetic information’ means information—

“(i) concerning—

“(I) the genetic tests of an individual;

“(II) the genetic tests of family members of the individual; or

“(III) the occurrence of a disease or disorder in family members of the individual; and
“(ii) that is used to predict risk of
disease in asymptomatic or undiagnosed
individuals.

“(B) EXCEPTIONS.—The term ‘genetic in-
formation’ shall not include—

“(i) information about the sex or age
of the individual;

“(ii) information derived from clinical
and laboratory tests, such as the chemical,
blood, or urine analyses of the individual
including cholesterol tests, used to deter-
mine health status or detect illness or diag-
nose disease; and

“(iii) information about physical
exams of the individual.

“(7) GENETIC SERVICES.—The term ‘genetic
services’ means health services provided for genetic
education and counseling.

“(8) GENETIC TEST.—The term ‘genetic test’
means the analysis of human DNA, RNA, chro-
omosomes, proteins, and metabolites, that detect
genotypes, mutations, or chromosomal changes.
Such term does not include information descried in
paragraph (6)(B).”.

(d) REGULATIONS AND EFFECTIVE DATE.—
(1) REGULATIONS.—Not later than 1 year after the date of enactment of this title, the Secretary of Labor shall issue final regulations in an accessible format to carry out the amendments made by this section.

(2) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to group health plans for plan years beginning after the date that is 18 months after the date of enactment of this title.

SEC. 102. AMENDMENTS TO THE PUBLIC HEALTH SERVICE ACT.

(a) AMENDMENTS RELATING TO THE GROUP MARKET.—

(1) PROHIBITION OF HEALTH DISCRIMINATION ON THE BASIS OF GENETIC INFORMATION OR GENETIC SERVICES.—

(A) NO ENROLLMENT RESTRICTION FOR GENETIC SERVICES.—Section 2702(a)(1)(F) of the Public Health Service Act (42 U.S.C. 300gg–1(a)(1)(F)) is amended by inserting before the period the following: “(including information about a request for or receipt of genetic services)”. 
(B) No discrimination in group premiums based on genetic information.—

Section 2702(b) of the Public Health Service Act (42 U.S.C. 300gg–1(b)) is amended by adding at the end the following:

“(3) No discrimination in group premiums based on genetic information.—For purposes of this section, a group health plan, or a health insurance issuer offering group health insurance coverage in connection with a group health plan, shall not adjust premium or contribution amounts for a group on the basis of genetic information concerning an individual in the group or a family member of the individual (including information about a request for or receipt of genetic services).”.

(2) Limitations on genetic testing and the collection of genetic information.—Section 2702 of the Public Health Service Act (42 U.S.C. 300gg–1) is amended by adding at the end the following:

“(c) Genetic Testing.—

“(1) Limitation on requesting or requiring genetic testing.—A group health plan, or a health insurance issuer offering health insurance coverage in connection with a group health plan,
shall not request or require an individual or a family member of such individual to undergo a genetic test.

“(2) RULE OF CONSTRUCTION.—Nothing in this part shall be construed to limit the authority of a health care professional, who is providing health care services with respect to an individual or who is acting on behalf of a group health plan or a health insurance issuer, to request that such individual or a family member of such individual undergo a genetic test. Such a health care professional shall not require that such individual or family member undergo a genetic test.

“(d) COMPLIANCE WITH CERTAIN CONFIDENTIALITY STANDARDS WITH RESPECT TO GENETIC INFORMATION.—With respect to the use or disclosure of genetic information by a group health plan, or a health insurance issuer offering health insurance coverage in connection with a group health plan, such information shall be deemed to be protected health information for purposes of, and shall be subject to, the standards promulgated by the Secretary of Health and Human Services under—

“(1) part C of title XI of the Social Security Act (42 U.S.C. 1320d et seq.); or
“(2) section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191; 110 Stat. 2033).

“(e) COLLECTION OF GENETIC INFORMATION.—

“(1) LIMITATION ON REQUESTING OR REQUIRING GENETIC INFORMATION.—Except as provided in paragraph (2), a group health plan, or a health insurance issuer offering health insurance coverage in connection with a group health plan, shall not request or require genetic information concerning an individual or a family member of the individual (including information about a request for or receipt of genetic services).

“(2) INFORMATION NEEDED FOR TREATMENT, PAYMENT, AND HEALTH CARE OPERATIONS.—Notwithstanding paragraph (1), a group health plan, or a health insurance issuer offering health insurance coverage in connection with a group health plan, that provides health care items and services to an individual may request genetic information concerning such individual or dependent for purposes of treatment, payment, or health care operations in accordance with the standards for protected health information described in subsection (d) to the extent that
the use of such information is otherwise consistent with this section.

“(3) Failure to provide necessary information.—If an individual or dependent refuses to provide the information requested under paragraph (2), and such information is for treatment, payment, or health care operations relating to the individual, the group health plan or health insurance issuer requesting such information shall not be required to provide coverage for the items, services, or treatments with respect to which the requested information relates.”.

(3) Definitions.—Section 2791(d) of the Public Health Service Act (42 U.S.C. 300gg–91(d)) is amended by adding at the end the following:

“(15) Family member.—The term ‘family member’ means with respect to an individual—

“(A) the spouse of the individual;

“(B) a dependent child of the individual, including a child who is born to or placed for adoption with the individual; and

“(C) all other individuals related by blood to the individual or the spouse or child described in subparagraph (A) or (B).

“(16) Genetic information.—
“(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘genetic information’ means information—

“(i) concerning—

“(I) the genetic tests of an individual;

“(II) the genetic tests of family members of the individual; or

“(III) the occurrence of a disease or disorder in family members of the individual; and

“(ii) that is used to predict risk of disease in asymptomatic or undiagnosed individuals.

“(B) EXCEPTIONS.—The term ‘genetic information’ shall not include—

“(i) information about the sex or age of the individual;

“(ii) information derived from clinical and laboratory tests, such as the chemical, blood, or urine analyses of the individual including cholesterol tests, used to determine health status or detect illness or diagnose disease; and
“(iii) information about physical exams of the individual.

“(17) Genetic services.—The term ‘genetic services’ means health services provided for genetic education and counseling.

“(18) Genetic test.—The term ‘genetic test’ means the analysis of human DNA, RNA, chromosomes, proteins, and metabolites, that detect genotypes, mutations, or chromosomal changes. Such term does not include information described in paragraph (16)(B).”.

(b) Amendment Relating to the Individual Market.—The first subpart 3 of part B of title XXVII of the Public Health Service Act (42 U.S.C. 300gg–51 et seq.) (relating to other requirements) is amended—

(1) by redesignating such subpart as subpart 2; and

(2) by adding at the end the following:

“SEC. 2753. PROHIBITION OF HEALTH DISCRIMINATION ON THE BASIS OF GENETIC INFORMATION.

“(a) Prohibition on Genetic Information as a Condition of Eligibility.—A health insurance issuer offering health insurance coverage in the individual market may not use genetic information as a condition of eligibility of an individual to enroll in individual health insur-
ance coverage (including information about a request for
or receipt of genetic services).

“(b) Prohibition on Genetic Information in
Setting Premium Rates.—For purposes of this section,
a health insurance issuer offering health insurance cov-
erage in the individual market shall not adjust premium
or contribution amounts for an individual on the basis of
genetic information concerning the individual or a family
member of the individual (including information about a
request for or receipt of genetic services).

“(c) Genetic Testing.—

“(1) Limitation on Requesting or Requiring Genetic Testing.—A health insurance issuer
offering health insurance coverage in the individual
market shall not request or require an individual or
a family member of such individual to undergo a ge-
netic test.

“(2) Rule of Construction.—Nothing in
this part shall be construed to limit the authority of
a health care professional, who is providing health
care services with respect to an individual or who is
acting on behalf of a health insurance issuer, to re-
quest that such individual or a family member of
such individual undergo a genetic test. Such a health
care professional shall not require that such individual or family member undergo a genetic test.

“(d) Compliance With Certain Confidentiality Standards With Respect to Genetic Information.—With respect to the use or disclosure of genetic information by a health insurance issuer offering health insurance coverage in the individual market, such information shall be deemed to be protected health information for purposes of, and shall be subject to, the standards promulgated by the Secretary of Health and Human Services under—

“(1) part C of title XI of the Social Security Act (42 U.S.C. 1320d et seq.); or

“(2) section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191; 110 Stat. 2033).

“(e) Collection of Genetic Information.—

“(1) Limitation on Requesting or Requiring Genetic Information.—Except as provided in paragraph (2), a health insurance issuer offering health insurance coverage in the individual market shall not request or require genetic information concerning an individual or a family member of the individual (including information about a request for or receipt of genetic services).
“(2) **Information needed for treatment, payment, and health care operations.**—Notwithstanding paragraph (1), a health insurance issuer offering health insurance coverage in the individual market that provides health care items and services to an individual may request genetic information concerning such individual or dependent for purposes of treatment, payment, or health care operations in accordance with the standards for protected health information described in subsection (d) to the extent that the use of such information is otherwise consistent with this section.

“(3) **Failure to provide necessary information.**—If an individual or dependent refuses to provide the information requested under paragraph (2), and such information is for treatment, payment, or health care operations relating to the individual, the health insurance issuer requesting such information shall not be required to provide coverage for the items, services, or treatments with respect to which the requested information relates.”.

(c) **Regulations and Effective Date.**—

(1) **Regulations.**—Not later than 1 year after the date of enactment of this title, the Secretary of Labor and the Secretary of Health and Human
Services (as the case may be) shall issue final regulations in an accessible format to carry out the amendments made by this section.

(2) Effective date.—The amendments made by this section shall apply—

(A) with respect to group health plans, and health insurance coverage offered in connection with group health plans, for plan years beginning after the date that is 18 months after the date of enactment of this title; and

(B) with respect to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market after the date that is 18 months after the date of enactment of this title.

SEC. 103. AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.

(a) Prohibition of Health Discrimination on the Basis of Genetic Information or Genetic Services.—

(1) No enrollment restriction for genetic services.—Section 9802(a)(1)(F) of the Internal Revenue Code of 1986 is amended by inserting before the period the following: “(including in-
formation about a request for or receipt of genetic services)’.’

(2) No discrimination in group premiums based on genetic information.—Section 9802(b) of the Internal Revenue Code of 1986 is amended by adding at the end the following:

‘‘(3) No discrimination in group premiums based on genetic information.—For purposes of this section, a group health plan shall not adjust premium or contribution amounts for a group on the basis of genetic information concerning an individual in the group or a family member of the individual (including information about a request for or receipt of genetic services).’’.

(b) Limitations on genetic testing and the collection of genetic information.—Section 9802 of the Internal Revenue Code of 1986 is amended by adding at the end the following:

‘‘(d) Genetic testing and genetic services.—

‘‘(1) Limitation on requesting or requiring genetic testing.—A group health plan shall not request or require an individual or a family member of such individual to undergo a genetic test.

‘‘(2) Rule of construction.—Nothing in this part shall be construed to limit the authority of
a health care professional, who is providing health care services with respect to an individual or who is acting on behalf of a group health plan, to request that such individual or a family member of such individual undergo a genetic test. Such a health care professional shall not require that such individual or family member undergo a genetic test.

“(e) Compliance With Certain Confidentiality Standards With Respect to Genetic Information.—With respect to the use or disclosure of genetic information by a group health plan, such information shall be deemed to be protected health information for purposes of, and shall be subject to, the standards promulgated by the Secretary of Health and Human Services under—

“(1) part C of title XI of the Social Security Act (42 U.S.C. 1320d et seq.); or

“(2) section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191; 110 Stat. 2033).

“(f) Collection of Genetic Information.—

“(1) Limitation on Requesting or Requiring Genetic Information.—Except as provided in paragraph (2), a group health plan shall not request or require genetic information concerning an individual or a family member of the individual (includ-
ing information about a request for or receipt of genetic services).

“(2) INFORMATION NEEDED FOR TREATMENT, PAYMENT, AND HEALTH CARE OPERATIONS.—Notwithstanding paragraph (1), a group health plan that provides health care items and services to an individual may request genetic information concerning such individual or dependent for purposes of treatment, payment, or health care operations in accordance with the standards for protected health information described in subsection (c) to the extent that the use of such information is otherwise consistent with this section.

“(3) FAILURE TO PROVIDE NECESSARY INFORMATION.—If an individual or dependent refuses to provide the information requested under paragraph (2), and such information is for treatment, payment, or health care operations relating to the individual, the group health plan requesting such information shall not be required to provide coverage for the items, services, or treatments with respect to which the requested information relates.”.

(e) DEFINITIONS.—Section 9832(d) of the Internal Revenue Code of 1986 is amended by adding at the end the following:
“(6) FAMILY MEMBER.—The term ‘family member’ means with respect to an individual—

“(A) the spouse of the individual;

“(B) a dependent child of the individual, including a child who is born to or placed for adoption with the individual; and

“(C) all other individuals related by blood to the individual or the spouse or child described in subparagraph (A) or (B).

“(7) GENETIC INFORMATION.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘genetic information’ means information—

“(i) concerning—

“(I) the genetic tests of an individual;

“(II) the genetic tests of family members of the individual; or

“(III) the occurrence of a disease or disorder in family members of the individual; and

“(ii) that is used to predict risk of disease in asymptomatic or undiagnosed individuals.
“(B) EXCEPTIONS.—The term ‘genetic information’ shall not include—

“(i) information about the sex or age of the individual;

“(ii) information derived from clinical and laboratory tests, such as the chemical, blood, or urine analyses of the individual including cholesterol tests, used to determine health status or detect illness or diagnose disease; and

“(iii) information about physical exams of the individual.

“(8) GENETIC SERVICES.—The term ‘genetic services’ means health services provided for genetic education and counseling.

“(9) GENETIC TEST.—The term ‘genetic test’ means the analysis of human DNA, RNA, chromosomes, proteins, and metabolites, that detect genotypes, mutations, or chromosomal changes. Such term does not include information described in paragraph (7)(B).”.

(d) REGULATIONS AND EFFECTIVE DATE.—

(1) REGULATIONS.—Not later than 1 year after the date of enactment of this title, the Secretary of the Treasury shall issue final regulations in an ac-
cessible format to carry out the amendments made by this section.

(2) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to group health plans for plan years beginning after the date that is 18 months after the date of enactment of this title.

SEC. 104. ASSURING COORDINATION.

The Secretary of the Treasury, the Secretary of Health and Human Services, and the Secretary of Labor shall ensure, through the execution of an interagency memorandum of understanding among such Secretaries, that—

(1) regulations, rulings, and interpretations issued by such Secretaries relating to the same matter over which two or more such Secretaries have responsibility under this title (and the amendments made by this title) are administered so as to have the same effect at all times; and

(2) coordination of policies relating to enforcing the same requirements through such Secretaries in order to have a coordinated enforcement strategy that avoids duplication of enforcement efforts and assigns priorities in enforcement.
TITLE II—PROHIBITING EMPLOYMENT DISCRIMINATION ON THE BASIS OF GENETIC INFORMATION

SEC. 201. DEFINITIONS.

In this title:


(2) EMPLOYEE; EMPLOYER; EMPLOYMENT AGENCY; LABOR ORGANIZATION; AND MEMBER.—The terms—

(A) “employee”, “employer”, “employment agency”, and “labor organization” have the meanings given such terms in section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e); and

(B) “employee” and “member”, as used with respect to a labor organization, include an applicant for employment and an applicant for membership in a labor organization, respectively.

(3) FAMILY MEMBER.—The term “family member” means with respect to an individual—
(A) the spouse of the individual;

(B) a dependent child of the individual, including a child who is born to or placed for adoption with the individual; and

(C) all other individuals related by blood to the individual or the spouse or child described in subparagraph (A) or (B).

(4) GENETIC INFORMATION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term “genetic information” means information—

(i) concerning—

(I) the genetic tests of an individual;

(II) the genetic tests of family members of the individual; or

(III) the occurrence of a disease or disorder in family members of the individual; and

(ii) that is used to predict risk of disease in asymptomatic or undiagnosed individuals.

(B) EXCEPTIONS.—The term “genetic information” shall not include—
(i) information about the sex or age of the individual;

(ii) information derived from clinical and laboratory tests, such as the chemical, blood, or urine analyses of the individual including cholesterol tests, used to determine health status or detect illness or diagnose disease; and

(iii) information about physical exams of the individual.

(5) GENETIC MONITORING.—The term “genetic monitoring” means the periodic examination of employees to evaluate acquired modifications to their genetic material, such as chromosomal damage or evidence of increased occurrence of mutations, that may have developed in the course of employment due to exposure to toxic substances in the workplace, in order to identify, evaluate, and respond to the effects of or control adverse environmental exposures in the workplace.

(6) GENETIC SERVICES.—The term “genetic services” means health services provided for genetic education and counseling.

(7) GENETIC TEST.—The term “genetic test” means the analysis of human DNA, RNA, chro-
mosomes, proteins, and metabolites, that detect
genotypes, mutations, or chromosomal changes.
Such term does not include information described in
paragraph (4)(B).

SEC. 202. EMPLOYER PRACTICES.

(a) USE OF GENETIC INFORMATION.—It shall be an
unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any
individual, or otherwise to discriminate against any
individual with respect to the compensation, terms,
conditions, or privileges of employment of the indi-
vidual, because of genetic information with respect
to the individual (or information about a request for
or the receipt of genetic services by such individual
or family member of such individual); or

(2) to limit, segregate, or classify the employees
of the employer in any way that would deprive or
tend to deprive any individual of employment oppor-
tunities or otherwise adversely affect the status of
the individual as an employee, because of genetic in-
formation with respect to the individual (or informa-
tion about a request for or the receipt of genetic
services by such individual or family member of such
individual).
(b) LIMITATION ON COLLECTION OF GENETIC INFORMATION.—It shall be an unlawful employment practice for an employer to intentionally request, require, or purchase genetic information with respect to an employee or a family member of the employee (or information about a request for the receipt of genetic services by such employee or a family of such employee) except—

(1) where the information involved is to be used for genetic monitoring of the biological effects of toxic substances in the workplace, but only if—

(A) the employer provides written notice of the genetic monitoring to the employee;

(B)(i) the employee provides prior, knowing, voluntary, and written authorization; or

(ii) the genetic monitoring is required by Federal, State, or local law;

(C) the employee is informed of individual monitoring results;

(D) the monitoring conforms to any Federal or State genetic monitoring regulations, including any such regulations that may be promulgated by the Secretary of Labor pursuant to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) or the Federal
Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.); and

    (E) the employer, excluding any licensed or certified health care professional that is involved in the genetic monitoring program, receives the results of the monitoring only in aggregate terms that do not disclose the identity of specific employees;

(2) where—

    (A) health or genetic services are offered by the employer;

    (B) the employee provides prior, knowing, voluntary, and written authorization; and

    (C) only the employee (or family member if the family member is receiving genetic services) and the licensed or certified health care professionals involved in providing such services receive individually identifiable information concerning the results of such services; or

(3) where the request or requirement is necessary to comply with Federal, State, or local law.

(c) LIMITATION.—In the case of genetic information to which paragraph (1), (2), or (3) of subsection (b) applies, such information may not be used in violation of paragraph (1) or (2) of subsection (a).
(d) Exception.—

(1) In general.—An employer shall not be considered to engage in an employment practice that is unlawful under this title because of its disparate impact, on the basis that the employer applies a qualification standard, test, or other selection criterion that screens out or tends to screen out, or otherwise denies a job benefit to, an individual, if the standard, test, or other selection criterion is shown to be job-related with respect to the employment position involved and consistent with business necessity.

(2) Qualification standard.—In this subsection, the term “qualification standard” may include a requirement that an individual shall not pose a direct threat to the health or safety of other individuals in the workplace.

(e) Rule of Construction Relating to Group Health Plans.—Nothing in this section shall be construed to prohibit a group health plan (as such term is defined in section 733(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1191b(a))), or a health insurance issuer offering group health insurance coverage in connection with a group health plan, from making a request described in subsection (b) if such re-

SEC. 203. EMPLOYMENT AGENCY PRACTICES.

(a) USE OF GENETIC INFORMATION.—It shall be an unlawful employment practice for an employment agency—

(1) to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of genetic information with respect to the individual (or information about a request for or the receipt of genetic services by such individual or family member of such individual); or

(2) to limit, segregate, or classify individuals or fail or refuse to refer for employment any individual in any way that would deprive or tend to deprive any individual of employment opportunities, or otherwise adversely affect the status of the individual as an employee, because of genetic information with respect to the individual (or information about a request for or the receipt of genetic services by such individual or family member of such individual).
(b) LIMITATION ON COLLECTION OF GENETIC INFORMATION.—It shall be an unlawful employment practice for an employment agency—

1. to intentionally request, require, or purchase genetic information with respect to an employee or family member of the employee (or information about a request for or the receipt of genetic services by such employee or family member of such employee), except that the provisions of section 202(b) shall apply with respect to employment agencies and employees (and the family members of the employees) under this paragraph in the same manner and to the same extent as such provisions apply to employers and employees (and the family members of the employees) under section 202(b); or

2. to cause or attempt to cause an employer to discriminate against an individual in violation of this title.

(c) LIMITATION AND EXCEPTION.—Subsections (c) and (d) of section 202 shall apply with respect to employment agencies and employees (and the family members of the employees) under this section in the same manner and to the same extent as such provisions apply to employers and employees (and the family members of the employees) under section 202.
SEC. 204. LABOR ORGANIZATION PRACTICES.

(a) Use of Genetic Information.—It shall be an unlawful employment practice for a labor organization—

(1) to exclude or to expel from the membership of the organization, or otherwise to discriminate against, any individual because of genetic information with respect to the individual (or information about a request for or the receipt of genetic services by such individual or family member of such individual); or

(2) to limit, segregate, or classify the members of the organization, or fail or refuse to refer for employment any individual, in any way that would deprive or tend to deprive any individual of employment opportunities, or otherwise adversely affect the status of the individual as an employee, because of genetic information with respect to the individual (or information about a request for or the receipt of genetic services by such individual or family member of such individual).

(b) Limitation on Collection of Genetic Information.—It shall be an unlawful employment practice for a labor organization—

(1) to intentionally request, require, or purchase genetic information with respect to an individual who is a member of a labor organization or
a family member of the individual (or information
about a request for or the receipt of genetic services
by such individual or family member of such indi-
vidual) except that the provisions of section 202(b)
shall apply with respect to labor organizations and
such individuals (and their family members) under
this paragraph in the same manner and to the same
extent as such provisions apply to employers and
employees (and the family members of the employ-
ees) under section 202(b); or

(2) to cause or attempt to cause an employer to
discriminate against an individual in violation of this
title.

(e) LIMITATION AND EXCEPTION.—Subsections (e)
and (d) of section 202 shall apply with respect to labor
organizations and individuals who are members of labor
organizations (and the family members of the individuals)
under this section in the same manner and to the same
extent as such provisions apply to employers and employ-
ees (and the family members of the employees) under sec-
tion 202.

SEC. 205. TRAINING PROGRAMS.

(a) USE OF GENETIC INFORMATION.—It shall be an
unlawful employment practice for any employer, labor or-
ganization, or joint labor-management committee control-
ling apprenticeship or other training or retraining, including on-the-job training programs—

(1) to discriminate against any individual because of genetic information with respect to the individual (or information about a request for or the receipt of genetic services by such individual or a family member of such individual) in admission to, or employment in, any program established to provide apprenticeship or other training or retraining; or

(2) to limit, segregate, or classify the applicants for or participants in such apprenticeship or other training or retraining, or fail or refuse to refer for employment any individual, in any way that would deprive or tend to deprive any individual of employment opportunities, or otherwise adversely affect the status of the individual as an employee, because of genetic information with respect to the individual (or information about a request for or receipt of genetic services by such individual or family member of such individual).

(b) LIMITATION ON COLLECTION OF GENETIC INFORMATION.—It shall be an unlawful employment practice for an employer, labor organization, or joint labor-management committee described in subsection (a)—
(1) to intentionally request, require, or purchase genetic information with respect to an individual who is an applicant for or a participant in such apprenticeship or other training or retraining (or information about a request for or the receipt of genetic services by such individual or family member of such individual) except that the provisions of section 202(b) shall apply with respect to such employers, labor organizations, and joint labor-management committees and to such individuals (and their family members) under this paragraph in the same manner and to the same extent as such provisions apply to employers and employees (and their family members) under section 202(b); or

(2) to cause or attempt to cause an employer to discriminate against an applicant for or a participant in such apprenticeship or other training or retraining in violation of this title.

(c) LIMITATION AND EXCEPTION.—Subsections (c) and (d) of section 202 shall apply with respect to employers, labor organizations, and joint labor-management committees described in subsection (a) and to individuals who are applicants for or participants in apprenticeship or other training or retraining (and the family members of the individuals) under this section in the same manner and
to the same extent as the provisions apply to employers and to employees (and the family members of the employees) under section 202.

SEC. 206. CONFIDENTIALITY OF GENETIC INFORMATION.

(a) Treatment of Information as Part of Confidential Medical Record.—

(1) In General.—If an employer, employment agency, labor organization, or joint labor-management committee possesses genetic information about an employee or member (or information about a request for or receipt of genetic services by such employee or member or family member of such employee or member), such information shall be treated and maintained as part of the employee’s or member’s confidential medical records.

(2) Limitation on Disclosure.—An employer, employment agency, labor organization, or joint labor-management committee shall not disclose genetic information concerning an employee or member (or information about a request for or receipt of genetic services by such employee or member or family member of such employee or member) except—

(A) to the employee (or family member if

the family member is receiving the genetic serv-
ices) or member at the request of the employee or member;

(B) to an occupational or other health researcher if the research is conducted in compliance with the regulations and protections provided for under part 46 of title 45, Code of Federal Regulations (or any corresponding similar regulation or rule);

(C) under legal compulsion of a Federal or State court order, except that if the court order was secured without the knowledge of the individual to whom the information refers, the employer shall provide the individual with adequate notice to challenge the court order;

(D) to government officials who are investigating compliance with this title if the information is relevant to the investigation;

(E) to the extent that such disclosure is necessary to comply with Federal, State, or local law; or

(F) as otherwise provided for in this title.

(b) Rule of Construction Relating to Group Health Plans.—Nothing in this section shall be construed to prohibit a group health plan (as such term is defined in section 733(a) of the Employee Retirement In-
come Security Act of 1974 (29 U.S.C. 1191b(a))), or a
health insurance issuer offering group health insurance
coverage in connection with a group health plan, from
using or disclosing information described in subsection (a)
if such use of disclosure is consistent with the provisions
of part 7 of subtitle B of title I of the Employee Retire-
seq.), title XXVII of the Public Health Service (42 U.S.C.
300gg et seq.), and chapter 100 of the Internal Revenue

SEC. 207. ENFORCEMENT.

The powers, remedies, and procedures set forth in
sections 705, 706, 707, 709, and 710 of the Civil Rights
2000e–8, and 2000e–9) shall be the powers, remedies, and
procedures that this title provides to the Commission, to
the Attorney General, or to any person alleging an unlaw-
ful employment practice in violation of section 202 (other
than subsection (e) of such section), 203, 204, 205, or
206(a) or the regulations promulgated under section 210,
concerning employment.

SEC. 208. AMENDMENT TO THE REVISED STATUTES.

(a) RIGHT OF RECOVERY.—Section 1977A(a) of the
Revised Statutes (42 U.S.C. 1981a(a)) is amended by
adding at the end the following:
“(4) Genetic Information.—In an action brought by a complaining party under the powers, remedies, and procedures set forth in section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5), as authorized under section 207 of the Genetic Information Nondiscrimination Act of 2003, against a respondent who is engaging (or has engaged) in an intentional unlawful employment practice prohibited by section 202 (other than subsection (e) of such section), 203, 204, 205 or 206(a) of such Genetic Information Nondiscrimination Act of 2003 against an individual (other than an action involving an employment practice that is allegedly unlawful because of its disparate impact), the complaining party may recover compensatory and punitive damages as permitted under subsection (b), in addition to any relief otherwise provided for under section 706(g) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5(g)), from the respondent.”.

(b) Conforming Amendments.—Section 1977A(d) of the Revised Statutes (42 U.S.C. 1981a(d)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (A), by striking “or” at the end;
(B) in subparagraph (B), by striking the period and inserting “; or”; and

(C) by adding at the end the following:

“(C) in the case of a person seeking to bring an action under subsection (a)(4), the Equal Employment Opportunity Commission, the Attorney General, or a person who may bring an action or proceeding under title II of the Genetic Information Nondiscrimination Act of 2003.”; and

(2) in paragraph (2), by striking “or the discrimination or the violation described in paragraph (2),” and inserting “the discrimination or the violation described in paragraph (2), or the intentional unlawful employment practice described in paragraph (4),”.

SEC. 209. CONSTRUCTION.

Nothing in this title shall be construed to—

(1) limit the rights or protections of an individual under the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), including coverage afforded to individuals under section 102 of such Act (42 U.S.C. 12112), or under the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), except that an individual may not bring an action against an em-
ployer, employment agency, labor organization, or joint labor-management committee pursuant to this title and also pursuant to the Americans with Disabilities Act of 1990 or the Rehabilitation Act of 1973, if the actions are predicated on the same facts or a common occurrence;

(2) limit the rights or protections of an individual to bring an action under this title against an employer, employment agency, labor organization, or joint labor-management committee for a violation of this title, except that an individual may not bring an action against such an employer, employment agency, labor organization, or joint labor-management committee, with respect to a group health plan or a health insurance issuer offering health insurance coverage in connection with a group health plan, under this title if the action is based on a violation of a provision of the amendments made by title I;

(3) limit the rights or protections of an individual under any other Federal or State statute that provides equal or greater protection to an individual than the rights or protections provided for under this title;

(4) apply to the Armed Forces Repository of Specimen Samples for the Identification of Remains;
(5) limit the authority of a Federal department or agency to conduct or sponsor occupational or other health research that is conducted in compliance with the regulations contained in part 46 of title 45, Code of Federal Regulations (or any corresponding or similar regulation or rule); and

(6) limit the statutory or regulatory authority of the Occupational Safety and Health Administration or the Mine Safety and Health Administration to promulgate or enforce workplace safety and health laws and regulations.

**SEC. 210. REGULATIONS.**

Not later than 1 year after the date of enactment of this title, the Commission shall issue final regulations in an accessible format to carry out this title.

**SEC. 211. SEVERABILITY.**

If any provision of this title, an amendment made by this title, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this title, the amendments made by this title, and the application of such provisions to any person or circumstance shall not be affected thereby.

**SEC. 212. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated such sums as may be necessary to carry out this title.
1 **SEC. 213. EFFECTIVE DATE.**

2 (a) In General.—This title takes effect on the date that is 18 months after the date of enactment of this Act.

3 (b) Enforcement.—Notwithstanding subsection (a), no enforcement action shall be commenced under section 207 until the date on which the Commission issues final regulations under section 210.