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H. R. 493

IN THE SENATE OF THE UNITED STATES

APRIL 26, 2007

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AN ACT

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 Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Genetic Information Nondiscrimination Act of 2007”.

4 (b) TABLE OF CONTENTS.—The table of contents of
5 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings.

TITLE I—GENETIC NONDISCRIMINATION IN HEALTH INSURANCE

Sec. 101. Amendments to Employee Retirement Income Security Act of 1974.

Sec. 102. Amendments to the Public Health Service Act.

Sec. 103. Amendments to the Internal Revenue Code of 1986.

Sec. 104. Amendments to title XVIII of the Social Security Act relating to
medigap.

Sec. 105. Privacy and confidentiality.

Sec. 106. Assuring coordination.

TITLE II—PROHIBITING EMPLOYMENT DISCRIMINATION ON THE
BASIS OF GENETIC INFORMATION

Sec. 201. Definitions.

Sec. 202. Employer practices.

Sec. 203. Employment agency practices.

Sec. 204. Labor organization practices.

Sec. 205. Training programs.

Sec. 206. Confidentiality of genetic information.

Sec. 207. Remedies and enforcement.

Sec. 208. Disparate impact.

Sec. 209. Construction.

Sec. 210. Medical information that is not genetic information.

Sec. 211. Regulations.

Sec. 212. Authorization of appropriations.

Sec. 213. Effective date.

TITLE III—MISCELLANEOUS PROVISIONS

Sec. 301. Guarantee agency collection retention.

Sec. 302. Severability.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

8 (1) Deciphering the sequence of the human ge-
9 nome and other advances in genetics open major
10 new opportunities for medical progress. New knowl-

1 edge about the genetic basis of illness will allow for
2 earlier detection of illnesses, often before symptoms
3 have begun. Genetic testing can allow individuals to
4 take steps to reduce the likelihood that they will con-
5 tract a particular disorder. New knowledge about ge-
6 netics may allow for the development of better thera-
7 pies that are more effective against disease or have
8 fewer side effects than current treatments. These
9 advances give rise to the potential misuse of genetic
10 information to discriminate in health insurance and
11 employment.

12 (2) The early science of genetics became the
13 basis of State laws that provided for the sterilization
14 of persons having presumed genetic “defects” such
15 as mental retardation, mental disease, epilepsy,
16 blindness, and hearing loss, among other conditions.
17 The first sterilization law was enacted in the State
18 of Indiana in 1907. By 1981, a majority of States
19 adopted sterilization laws to “correct” apparent ge-
20 netic traits or tendencies. Many of these State laws
21 have since been repealed, and many have been modi-
22 fied to include essential constitutional requirements
23 of due process and equal protection. However, the
24 current explosion in the science of genetics, and the
25 history of sterilization laws by the States based on

1 early genetic science, compels Congressional action
2 in this area.

3 (3) Although genes are facially neutral markers,
4 many genetic conditions and disorders are associated
5 with particular racial and ethnic groups and gender.
6 Because some genetic traits are most prevalent in
7 particular groups, members of a particular group
8 may be stigmatized or discriminated against as a re-
9 sult of that genetic information. This form of dis-
10 crimination was evident in the 1970s, which saw the
11 advent of programs to screen and identify carriers of
12 sickle cell anemia, a disease which afflicts African-
13 Americans. Once again, State legislatures began to
14 enact discriminatory laws in the area, and in the
15 early 1970s began mandating genetic screening of
16 all African Americans for sickle cell anemia, leading
17 to discrimination and unnecessary fear. To alleviate
18 some of this stigma, Congress in 1972 passed the
19 National Sickle Cell Anemia Control Act, which
20 withholds Federal funding from States unless sickle
21 cell testing is voluntary.

22 (4) Congress has been informed of examples of
23 genetic discrimination in the workplace. These in-
24 clude the use of pre-employment genetic screening at
25 Lawrence Berkeley Laboratory, which led to a court

1 decision in favor of the employees in that case Nor-
2 man-Bloodsaw v. Lawrence Berkeley Laboratory
3 (135 F.3d 1260, 1269 (9th Cir. 1998)). Congress
4 clearly has a compelling public interest in relieving
5 the fear of discrimination and in prohibiting its ac-
6 tual practice in employment and health insurance.

7 (5) Federal law addressing genetic discrimina-
8 tion in health insurance and employment is incom-
9 plete in both the scope and depth of its protections.
10 Moreover, while many States have enacted some type
11 of genetic non-discrimination law, these laws vary
12 widely with respect to their approach, application,
13 and level of protection. Congress has collected sub-
14 stantial evidence that the American public and the
15 medical community find the existing patchwork of
16 State and Federal laws to be confusing and inad-
17 equate to protect them from discrimination. There-
18 fore Federal legislation establishing a national and
19 uniform basic standard is necessary to fully protect
20 the public from discrimination and allay their con-
21 cerns about the potential for discrimination, thereby
22 allowing individuals to take advantage of genetic
23 testing, technologies, research, and new therapies.

1 **TITLE I—GENETIC NON-**
2 **DISCRIMINATION IN HEALTH**
3 **INSURANCE**

4 **SEC. 101. AMENDMENTS TO EMPLOYEE RETIREMENT IN-**
5 **COME SECURITY ACT OF 1974.**

6 (a) NO DISCRIMINATION IN GROUP PREMIUMS
7 BASED ON GENETIC INFORMATION.—Section 702(b) of
8 the Employee Retirement Income Security Act of 1974
9 (29 U.S.C. 1182(b)) is amended—

10 (1) in paragraph (2)(A), by inserting before the
11 semicolon the following: “except as provided in para-
12 graph (3)”; and

13 (2) by adding at the end the following:

14 “(3) NO GROUP-BASED DISCRIMINATION ON
15 BASIS OF GENETIC INFORMATION.—For purposes of
16 this section, a group health plan, and a health insur-
17 ance issuer offering group health insurance coverage
18 in connection with a group health plan, may not ad-
19 just premium or contribution amounts for the group
20 covered under such plan on the basis of genetic in-
21 formation.”.

22 (b) LIMITATIONS ON GENETIC TESTING; PROHIBI-
23 TION ON COLLECTION OF GENETIC INFORMATION; APPLI-
24 CATION TO ALL PLANS.—Section 702 of the Employee

1 Retirement Income Security Act of 1974 (29 U.S.C. 1182)

2 is amended by adding at the end the following:

3 “(c) GENETIC TESTING.—

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

10 “(2) RULE OF CONSTRUCTION.—Paragraph (1)
11 shall not be construed to limit the authority of a
12 health care professional who is providing health care
13 services to an individual to request that such indi-
14 vidual undergo a genetic test.

15 “(3) RULE OF CONSTRUCTION REGARDING PAY-
16 MENT.—

17 “(A) IN GENERAL.—Nothing in paragraph
18 (1) shall be construed to preclude a group
19 health plan, or a health insurance issuer offer-
20 ing health insurance coverage in connection
21 with a group health plan, from obtaining and
22 using the results of a genetic test in making a
23 determination regarding payment (as such term
24 is defined for the purposes of applying the regu-
25 lations promulgated by the Secretary of Health

1 and Human Services under part C of title XI
2 of the Social Security Act and section 264 of
3 the Health Insurance Portability and Account-
4 ability Act of 1996, as may be revised from
5 time to time) consistent with subsection (a).

6 “(B) LIMITATION.—For purposes of sub-
7 paragraph (A), a group health plan, or a health
8 insurance issuer offering health insurance cov-
9 erage in connection with a group health plan,
10 may request only the minimum amount of in-
11 formation necessary to accomplish the intended
12 purpose.

13 “(4) RESEARCH EXCEPTION.—Notwithstanding
14 paragraph (1), a group health plan, or a health in-
15 surance issuer offering health insurance coverage in
16 connection with a group health plan, may request,
17 but not require, that a participant or beneficiary un-
18 dergo a genetic test if each of the following condi-
19 tions is met:

20 “(A) The request is made, in writing, pur-
21 suant to research that complies with part 46 of
22 title 45, Code of Federal Regulations, or equiv-
23 alent Federal regulations, and any applicable
24 State or local law or regulations for the protec-
25 tion of human subjects in research.

1 “(B) The plan or issuer clearly indicates to
2 each participant or beneficiary, or in the case of
3 a minor child, to the legal guardian of such
4 beneficiary, to whom the request is made that—

5 “(i) compliance with the request is
6 voluntary; and

7 “(ii) non-compliance will have no ef-
8 fect on enrollment status or premium or
9 contribution amounts.

10 “(C) No genetic information collected or
11 acquired under this paragraph shall be used for
12 underwriting purposes.

13 “(D) The plan or issuer notifies the Sec-
14 retary in writing that the plan or issuer is con-
15 ducting activities pursuant to the exception pro-
16 vided for under this paragraph, including a de-
17 scription of the activities conducted.

18 “(E) The plan or issuer complies with such
19 other conditions as the Secretary may by regu-
20 lation require for activities conducted under this
21 paragraph.

22 “(d) PROHIBITION ON COLLECTION OF GENETIC IN-
23 FORMATION.—

24 “(1) IN GENERAL.—A group health plan, and a
25 health insurance issuer offering health insurance

1 coverage in connection with a group health plan,
2 shall not request, require, or purchase genetic infor-
3 mation for underwriting purposes (as defined in sec-
4 tion 733).

5 “(2) PROHIBITION ON COLLECTION OF GE-
6 NETIC INFORMATION PRIOR TO ENROLLMENT.—A
7 group health plan, and a health insurance issuer of-
8 fering health insurance coverage in connection with
9 a group health plan, shall not request, require, or
10 purchase genetic information with respect to any in-
11 dividual prior to such individual’s enrollment under
12 the plan or coverage in connection with such enroll-
13 ment.

14 “(3) INCIDENTAL COLLECTION.—If a group
15 health plan, or a health insurance issuer offering
16 health insurance coverage in connection with a group
17 health plan, obtains genetic information incidental to
18 the requesting, requiring, or purchasing of other in-
19 formation concerning any individual, such request,
20 requirement, or purchase shall not be considered a
21 violation of paragraph (2) if such request, require-
22 ment, or purchase is not in violation of paragraph
23 (1).

24 “(e) APPLICATION TO ALL PLANS.—The provisions
25 of subsections (a)(1)(F), (b)(3), (c), and (d), and sub-

1 section (b)(1) and section 701 with respect to genetic in-
2 formation, shall apply to group health plans and health
3 insurance issuers without regard to section 732(a).”.

4 (c) APPLICATION TO GENETIC INFORMATION OF A
5 FETUS OR EMBRYO.—Such section is further amended by
6 adding at the end the following:

7 “(f) GENETIC INFORMATION OF A FETUS OR EM-
8 BRYO.—Any reference in this part to genetic information
9 concerning an individual or family member of an indi-
10 vidual shall—

11 “(1) with respect to such an individual or fam-
12 ily member of an individual who is a pregnant
13 woman, include genetic information of any fetus car-
14 ried by such pregnant woman; and

15 “(2) with respect to an individual or family
16 member utilizing an assisted reproductive tech-
17 nology, include genetic information of any embryo le-
18 gally held by the individual or family member.”.

19 (d) DEFINITIONS.—Section 733(d) of the Employee
20 Retirement Income Security Act of 1974 (29 U.S.C.
21 1191b(d)) is amended by adding at the end the following:

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

1 “(A) a dependent (as such term is used for
2 purposes of section 701(f)(2)) of such indi-
3 vidual, and

4 “(B) any other individual who is a first-de-
5 gree, second-degree, third-degree, or fourth-de-
6 gree relative of such individual or of an indi-
7 vidual described in subparagraph (A).

8 “(6) GENETIC INFORMATION.—

9 “(A) IN GENERAL.—The term ‘genetic in-
10 formation’ means, with respect to any indi-
11 vidual, information about—

12 “(i) such individual’s genetic tests,

13 “(ii) the genetic tests of family mem-
14 bers of such individual, and

15 “(iii) subject to subparagraph (D),
16 the manifestation of a disease or disorder
17 in family members of such individual.

18 “(B) INCLUSION OF GENETIC SERVICES.—

19 Such term includes, with respect to any indi-
20 vidual, any request for, or receipt of, genetic
21 services (including genetic services received pur-
22 suant to participation in clinical research) by
23 such individual or any family member of such
24 individual.

1 “(C) EXCLUSIONS.—The term ‘genetic in-
2 formation’ shall not include information about
3 the sex or age of any individual.

4 “(D) APPLICATION TO FAMILY MEMBERS
5 COVERED UNDER SAME PLAN.—Information de-
6 scribed in clause (iii) of subparagraph (A) shall
7 not be treated as genetic information to the ex-
8 tent that such information is taken into account
9 only with respect to the individual in which
10 such disease or disorder is manifested and not
11 as genetic information with respect to any other
12 individual.

13 “(7) GENETIC TEST.—

14 “(A) IN GENERAL.—The term ‘genetic
15 test’ means an analysis of human DNA, RNA,
16 chromosomes, proteins, or metabolites, that de-
17 tects genotypes, mutations, or chromosomal
18 changes.

19 “(B) EXCEPTIONS.—The term ‘genetic
20 test’ does not mean—

21 “(i) an analysis of proteins or metabo-
22 lites that does not detect genotypes,
23 mutations, or chromosomal changes; or

24 “(ii) an analysis of proteins or me-
25 tabolites that is directly related to a mani-

1 fested disease, disorder, or pathological
2 condition that could reasonably be detected
3 by a health care professional with appro-
4 priate training and expertise in the field of
5 medicine involved.

6 “(8) GENETIC SERVICES.—The term ‘genetic
7 services’ means—

8 “(A) a genetic test;

9 “(B) genetic counseling (including obtain-
10 ing, interpreting, or assessing genetic informa-
11 tion); or

12 “(C) genetic education.

13 “(9) UNDERWRITING PURPOSES.—The term
14 ‘underwriting purposes’ means, with respect to any
15 group health plan, or health insurance coverage of-
16 fered in connection with a group health plan—

17 “(A) rules for, or determination of, eligi-
18 bility (including enrollment and continued eligi-
19 bility) for benefits under the plan or coverage;

20 “(B) the computation of premium or con-
21 tribution amounts under the plan or coverage;

22 “(C) the application of any pre-existing
23 condition exclusion under the plan or coverage;
24 and

1 “(D) other activities related to the cre-
2 ation, renewal, or replacement of a contract of
3 health insurance or health benefits.”.

4 (e) ERISA ENFORCEMENT.—Section 502 of the Em-
5 ployee Retirement Income Security Act of 1974 (29
6 U.S.C. 1132) is amended—

7 (1) in subsection (a)(6), by striking “(7), or
8 (8)” and inserting “(7), (8), or (9)”; and

9 (2) in subsection (c), by redesignating para-
10 graph (9) as paragraph (10), and by inserting after
11 paragraph (8) the following new paragraph:

12 “(9) SECRETARIAL ENFORCEMENT AUTHORITY
13 RELATING TO USE OF GENETIC INFORMATION.—

14 “(A) GENERAL RULE.—The Secretary may
15 impose a penalty against any plan sponsor of a
16 group health plan, or any health insurance
17 issuer offering health insurance coverage in
18 connection with the plan, for any failure by
19 such sponsor or issuer to meet the requirements
20 of subsection (a)(1)(F), (b)(3), (c), or (d) of
21 section 702 or section 701 or 702(b)(1) with re-
22 spect to genetic information, in connection with
23 the plan.

24 “(B) AMOUNT.—

1 “(i) IN GENERAL.—The amount of
2 the penalty imposed by subparagraph (A)
3 shall be \$100 for each day in the non-
4 compliance period with respect to each par-
5 ticipant or beneficiary to whom such fail-
6 ure relates.

7 “(ii) NONCOMPLIANCE PERIOD.—For
8 purposes of this paragraph, the term ‘non-
9 compliance period’ means, with respect to
10 any failure, the period—

11 “(I) beginning on the date such
12 failure first occurs; and

13 “(II) ending on the date the fail-
14 ure is corrected.

15 “(C) MINIMUM PENALTIES WHERE FAIL-
16 URE DISCOVERED.—Notwithstanding clauses (i)
17 and (ii) of subparagraph (D):

18 “(i) IN GENERAL.—In the case of 1 or
19 more failures with respect to a participant
20 or beneficiary—

21 “(I) which are not corrected be-
22 fore the date on which the plan re-
23 ceives a notice from the Secretary of
24 such violation; and

1 “(II) which occurred or continued
2 during the period involved;
3 the amount of penalty imposed by subpara-
4 graph (A) by reason of such failures with
5 respect to such participant or beneficiary
6 shall not be less than \$2,500.

7 “(ii) HIGHER MINIMUM PENALTY
8 WHERE VIOLATIONS ARE MORE THAN DE
9 MINIMIS.—To the extent violations for
10 which any person is liable under this para-
11 graph for any year are more than de mini-
12 mis, clause (i) shall be applied by sub-
13 stituting ‘\$15,000’ for ‘\$2,500’ with re-
14 spect to such person.

15 “(D) LIMITATIONS.—

16 “(i) PENALTY NOT TO APPLY WHERE
17 FAILURE NOT DISCOVERED EXERCISING
18 REASONABLE DILIGENCE.—No penalty
19 shall be imposed by subparagraph (A) on
20 any failure during any period for which it
21 is established to the satisfaction of the
22 Secretary that the person otherwise liable
23 for such penalty did not know, and exer-
24 cising reasonable diligence would not have
25 known, that such failure existed.

1 “(ii) PENALTY NOT TO APPLY TO
2 FAILURES CORRECTED WITHIN CERTAIN
3 PERIODS.—No penalty shall be imposed by
4 subparagraph (A) on any failure if—

5 “(I) such failure was due to rea-
6 sonable cause and not to willful ne-
7 glect; and

8 “(II) such failure is corrected
9 during the 30-day period beginning on
10 the first date the person otherwise lia-
11 ble for such penalty knew, or exer-
12 cising reasonable diligence would have
13 known, that such failure existed.

14 “(iii) OVERALL LIMITATION FOR UN-
15 INTENTIONAL FAILURES.—In the case of
16 failures which are due to reasonable cause
17 and not to willful neglect, the penalty im-
18 posed by subparagraph (A) for failures
19 shall not exceed the amount equal to the
20 lesser of—

21 “(I) 10 percent of the aggregate
22 amount paid or incurred by the plan
23 sponsor (or predecessor plan sponsor)
24 during the preceding taxable year for
25 group health plans; or

1 “(II) \$500,000.

2 “(E) WAIVER BY SECRETARY.—In the case
3 of a failure which is due to reasonable cause
4 and not to willful neglect, the Secretary may
5 waive part or all of the penalty imposed by sub-
6 paragraph (A) to the extent that the payment
7 of such penalty would be excessive relative to
8 the failure involved.

9 “(F) DEFINITIONS.—Terms used in this
10 paragraph which are defined in section 733
11 shall have the meanings provided such terms in
12 such section.”.

13 (f) REGULATIONS AND EFFECTIVE DATE.—

14 (1) REGULATIONS.—The Secretary of Labor
15 shall issue final regulations not later than 1 year
16 after the date of enactment of this Act to carry out
17 the amendments made by this section.

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

1 **SEC. 102. AMENDMENTS TO THE PUBLIC HEALTH SERVICE**
2 **ACT.**

3 (a) AMENDMENTS RELATING TO THE GROUP MAR-
4 KET.—

5 (1) NO DISCRIMINATION IN GROUP PREMIUMS
6 BASED ON GENETIC INFORMATION.—Section
7 2702(b) of the Public Health Service Act (42 U.S.C.
8 300gg–1(b)) is amended—

9 (A) in paragraph (2)(A), by inserting be-
10 fore the semicolon the following: “except as pro-
11 vided in paragraph (3)”; and

12 (B) by adding at the end the following:

13 “(3) NO GROUP-BASED DISCRIMINATION ON
14 BASIS OF GENETIC INFORMATION.—For purposes of
15 this section, a group health plan, and health insur-
16 ance issuer offering group health insurance coverage
17 in connection with a group health plan, may not ad-
18 just premium or contribution amounts for the group
19 covered under such plan on the basis of genetic in-
20 formation.”.

21 (2) LIMITATIONS ON GENETIC TESTING; PROHI-
22 BITION ON COLLECTION OF GENETIC INFORMATION;
23 APPLICATION TO ALL PLANS.—Section 2702 of the
24 Public Health Service Act (42 U.S.C. 300gg–1) is
25 amended by adding at the end the following:

26 “(c) GENETIC TESTING.—

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

7 “(2) RULE OF CONSTRUCTION.—Paragraph (1)
8 shall not be construed to limit the authority of a
9 health care professional who is providing health care
10 services to an individual to request that such indi-
11 vidual undergo a genetic test.

12 “(3) RULE OF CONSTRUCTION REGARDING PAY-
13 MENT.—

14 “(A) IN GENERAL.—Nothing in paragraph
15 (1) shall be construed to preclude a group
16 health plan, or a health insurance issuer offer-
17 ing health insurance coverage in connection
18 with a group health plan, from obtaining and
19 using the results of a genetic test in making a
20 determination regarding payment (as such term
21 is defined for the purposes of applying the regu-
22 lations promulgated by the Secretary under
23 part C of title XI of the Social Security Act and
24 section 264 of the Health Insurance Portability
25 and Accountability Act of 1996, as may be re-

1 vised from time to time) consistent with sub-
2 section (a).

3 “(B) LIMITATION.—For purposes of sub-
4 paragraph (A), a group health plan, or a health
5 insurance issuer offering health insurance cov-
6 erage in connection with a group health plan,
7 may request only the minimum amount of in-
8 formation necessary to accomplish the intended
9 purpose.

10 “(4) RESEARCH EXCEPTION.—Notwithstanding
11 paragraph (1), a group health plan, or a health in-
12 surance issuer offering health insurance coverage in
13 connection with a group health plan, may request,
14 but not require, that a participant or beneficiary un-
15 dergo a genetic test if each of the following condi-
16 tions is met:

17 “(A) The request is made pursuant to re-
18 search that complies with part 46 of title 45,
19 Code of Federal Regulations, or equivalent Fed-
20 eral regulations, and any applicable State or
21 local law or regulations for the protection of
22 human subjects in research.

23 “(B) The plan or issuer clearly indicates to
24 each participant or beneficiary, or in the case of

1 a minor child, to the legal guardian of such
2 beneficiary, to whom the request is made that—

3 “(i) compliance with the request is
4 voluntary; and

5 “(ii) non-compliance will have no ef-
6 fect on enrollment status or premium or
7 contribution amounts.

8 “(C) No genetic information collected or
9 acquired under this paragraph shall be used for
10 underwriting purposes.

11 “(D) The plan or issuer notifies the Sec-
12 retary in writing that the plan or issuer is con-
13 ducting activities pursuant to the exception pro-
14 vided for under this paragraph, including a de-
15 scription of the activities conducted.

16 “(E) The plan or issuer complies with such
17 other conditions as the Secretary may by regu-
18 lation require for activities conducted under this
19 paragraph.

20 “(d) PROHIBITION ON COLLECTION OF GENETIC IN-
21 FORMATION.—

22 “(1) IN GENERAL.—A group health plan, and a
23 health insurance issuer offering health insurance
24 coverage in connection with a group health plan,
25 shall not request, require, or purchase genetic infor-

1 mation for underwriting purposes (as defined in sec-
2 tion 2791).

3 “(2) PROHIBITION ON COLLECTION OF GE-
4 NETIC INFORMATION PRIOR TO ENROLLMENT.—A
5 group health plan, and a health insurance issuer of-
6 fering health insurance coverage in connection with
7 a group health plan, shall not request, require, or
8 purchase genetic information with respect to any in-
9 dividual prior to such individual’s enrollment under
10 the plan or coverage in connection with such enroll-
11 ment.

12 “(3) INCIDENTAL COLLECTION.—If a group
13 health plan, or a health insurance issuer offering
14 health insurance coverage in connection with a group
15 health plan, obtains genetic information incidental to
16 the requesting, requiring, or purchasing of other in-
17 formation concerning any individual, such request,
18 requirement, or purchase shall not be considered a
19 violation of paragraph (2) if such request, require-
20 ment, or purchase is not in violation of paragraph
21 (1).

22 “(e) APPLICATION TO ALL PLANS.—The provisions
23 of subsections (a)(1)(F), (b)(3), (c) , and (d) and sub-
24 section (b)(1) and section 2701 with respect to genetic in-

1 formation, shall apply to group health plans and health
 2 insurance issuers without regard to section 2721(a).”.

3 (3) APPLICATION TO GENETIC INFORMATION OF
 4 A FETUS OR EMBRYO.—Such section is further
 5 amended by adding at the end the following:

6 “(f) GENETIC INFORMATION OF A FETUS OR EM-
 7 BRYO.—Any reference in this part to genetic information
 8 concerning an individual or family member of an indi-
 9 vidual shall—

10 “(1) with respect to such an individual or fam-
 11 ily member of an individual who is a pregnant
 12 woman, include genetic information of any fetus car-
 13 ried by such pregnant woman; and

14 “(2) with respect to an individual or family
 15 member utilizing an assisted reproductive tech-
 16 nology, include genetic information of any embryo le-
 17 gally held by the individual or family member.”.

18 (4) DEFINITIONS.—Section 2791(d) of the Pub-
 19 lic Health Service Act (42 U.S.C. 300gg–91(d)) is
 20 amended by adding at the end the following:

21 “(15) FAMILY MEMBER.—The term ‘family
 22 member’ means, with respect to any individual—

23 “(A) a dependent (as such term is used for
 24 purposes of section 2701(f)(2)) of such indi-
 25 vidual; and

1 “(B) any other individual who is a first-de-
2 gree, second-degree, third-degree, or fourth-de-
3 gree relative of such individual or of an indi-
4 vidual described in subparagraph (A).

5 “(16) GENETIC INFORMATION.—

6 “(A) IN GENERAL.—The term ‘genetic in-
7 formation’ means, with respect to any indi-
8 vidual, information about—

9 “(i) such individual’s genetic tests,

10 “(ii) the genetic tests of family mem-
11 bers of such individual, and

12 “(iii) subject to subparagraph (D),
13 the manifestation of a disease or disorder
14 in family members of such individual.

15 “(B) INCLUSION OF GENETIC SERVICES.—

16 Such term includes, with respect to any indi-
17 vidual, any request for, or receipt of, genetic
18 services (including genetic services received pur-
19 suant to participation in clinical research) by
20 such individual or any family member of such
21 individual.

22 “(C) EXCLUSIONS.—The term ‘genetic in-
23 formation’ shall not include information about
24 the sex or age of any individual.

1 “(D) APPLICATION TO FAMILY MEMBERS
2 COVERED UNDER SAME PLAN.—Information de-
3 scribed in clause (iii) of subparagraph (A) shall
4 not be treated as genetic information to the ex-
5 tent that such information is taken into account
6 only with respect to the individual in which
7 such disease or disorder is manifested and not
8 as genetic information with respect to any other
9 individual.

10 “(17) GENETIC TEST.—

11 “(A) IN GENERAL.—The term ‘genetic
12 test’ means an analysis of human DNA, RNA,
13 chromosomes, proteins, or metabolites, that de-
14 tects genotypes, mutations, or chromosomal
15 changes.

16 “(B) EXCEPTIONS.—The term ‘genetic
17 test’ does not mean—

18 “(i) an analysis of proteins or metabo-
19 lites that does not detect genotypes,
20 mutations, or chromosomal changes; or

21 “(ii) an analysis of proteins or me-
22 tabolites that is directly related to a mani-
23 fested disease, disorder, or pathological
24 condition that could reasonably be detected
25 by a health care professional with appro-

1 priate training and expertise in the field of
2 medicine involved.

3 “(18) GENETIC SERVICES.—The term ‘genetic
4 services’ means—

5 “(A) a genetic test;

6 “(B) genetic counseling (including obtain-
7 ing, interpreting, or assessing genetic informa-
8 tion); or

9 “(C) genetic education.

10 “(19) UNDERWRITING PURPOSES.—The term
11 ‘underwriting purposes’ means, with respect to any
12 group health plan, or health insurance coverage of-
13 fered in connection with a group health plan—

14 “(A) rules for, or determination of, eligi-
15 bility (including enrollment and continued eligi-
16 bility) for benefits under the plan or coverage;

17 “(B) the computation of premium or con-
18 tribution amounts under the plan or coverage;

19 “(C) the application of any pre-existing
20 condition exclusion under the plan or coverage;
21 and

22 “(D) other activities related to the cre-
23 ation, renewal, or replacement of a contract of
24 health insurance or health benefits.”.

1 (5) REMEDIES AND ENFORCEMENT.—Section
2 2722(b) of the Public Health Service Act (42 U.S.C.
3 300gg–22(b)) is amended by adding at the end the
4 following:

5 “(3) ENFORCEMENT AUTHORITY RELATING TO
6 GENETIC DISCRIMINATION.—

7 “(A) GENERAL RULE.—In the cases de-
8 scribed in paragraph (1), notwithstanding the
9 provisions of paragraph (2)(C), the succeeding
10 subparagraphs of this paragraph shall apply
11 with respect to an action under this subsection
12 by the Secretary with respect to any failure of
13 a health insurance issuer in connection with a
14 group health plan, to meet the requirements of
15 subsection (a)(1)(F), (b)(3), (c), or (d) of sec-
16 tion 2702 or section 2701 or 2702(b)(1) with
17 respect to genetic information in connection
18 with the plan.

19 “(B) AMOUNT.—

20 “(i) IN GENERAL.—The amount of
21 the penalty imposed under this paragraph
22 shall be \$100 for each day in the non-
23 compliance period with respect to each par-
24 ticipant or beneficiary to whom such fail-
25 ure relates.

1 “(ii) NONCOMPLIANCE PERIOD.—For
2 purposes of this paragraph, the term ‘non-
3 compliance period’ means, with respect to
4 any failure, the period—

5 “(I) beginning on the date such
6 failure first occurs; and

7 “(II) ending on the date the fail-
8 ure is corrected.

9 “(C) MINIMUM PENALTIES WHERE FAIL-
10 URE DISCOVERED.—Notwithstanding clauses (i)
11 and (ii) of subparagraph (D):

12 “(i) IN GENERAL.—In the case of 1 or
13 more failures with respect to an indi-
14 vidual—

15 “(I) which are not corrected be-
16 fore the date on which the plan re-
17 ceives a notice from the Secretary of
18 such violation; and

19 “(II) which occurred or continued
20 during the period involved;
21 the amount of penalty imposed by subpara-
22 graph (A) by reason of such failures with
23 respect to such individual shall not be less
24 than \$2,500.

1 “(ii) HIGHER MINIMUM PENALTY
2 WHERE VIOLATIONS ARE MORE THAN DE
3 MINIMIS.—To the extent violations for
4 which any person is liable under this para-
5 graph for any year are more than de mini-
6 mis, clause (i) shall be applied by sub-
7 stituting ‘\$15,000’ for ‘\$2,500’ with re-
8 spect to such person.

9 “(D) LIMITATIONS.—

10 “(i) PENALTY NOT TO APPLY WHERE
11 FAILURE NOT DISCOVERED EXERCISING
12 REASONABLE DILIGENCE.—No penalty
13 shall be imposed by subparagraph (A) on
14 any failure during any period for which it
15 is established to the satisfaction of the
16 Secretary that the person otherwise liable
17 for such penalty did not know, and exer-
18 cising reasonable diligence would not have
19 known, that such failure existed.

20 “(ii) PENALTY NOT TO APPLY TO
21 FAILURES CORRECTED WITHIN CERTAIN
22 PERIODS.—No penalty shall be imposed by
23 subparagraph (A) on any failure if—

1 “(I) such failure was due to rea-
2 sonable cause and not to willful ne-
3 glect; and

4 “(II) such failure is corrected
5 during the 30-day period beginning on
6 the first date the person otherwise lia-
7 ble for such penalty knew, or exer-
8 cising reasonable diligence would have
9 known, that such failure existed.

10 “(iii) OVERALL LIMITATION FOR UN-
11 INTENTIONAL FAILURES.—In the case of
12 failures which are due to reasonable cause
13 and not to willful neglect, the penalty im-
14 posed by subparagraph (A) for failures
15 shall not exceed the amount equal to the
16 lesser of—

17 “(I) 10 percent of the aggregate
18 amount paid or incurred by the em-
19 ployer (or predecessor employer) dur-
20 ing the preceding taxable year for
21 group health plans; or

22 “(II) \$500,000.

23 “(E) WAIVER BY SECRETARY.—In the case
24 of a failure which is due to reasonable cause
25 and not to willful neglect, the Secretary may

1 waive part or all of the penalty imposed by sub-
 2 paragraph (A) to the extent that the payment
 3 of such penalty would be excessive relative to
 4 the failure involved.”.

5 (b) AMENDMENT RELATING TO THE INDIVIDUAL
 6 MARKET.—

7 (1) IN GENERAL.—The first subpart 3 of part
 8 B of title XXVII of the Public Health Service Act
 9 (42 U.S.C. 300gg–51 et seq.) (relating to other re-
 10 quirements) is amended—

11 (A) by redesignating such subpart as sub-
 12 part 2; and

13 (B) by adding at the end the following:

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

16 “(a) PROHIBITION ON GENETIC INFORMATION AS A
 17 CONDITION OF ELIGIBILITY.—A health insurance issuer
 18 offering health insurance coverage in the individual mar-
 19 ket may not establish rules for the eligibility (including
 20 continued eligibility) of any individual to enroll in indi-
 21 vidual health insurance coverage based on genetic infor-
 22 mation.

23 “(b) PROHIBITION ON GENETIC INFORMATION IN
 24 SETTING PREMIUM RATES.—A health insurance issuer of-
 25 fering health insurance coverage in the individual market

1 shall not adjust premium or contribution amounts for an
2 individual on the basis of genetic information concerning
3 the individual or a family member of the individual.

4 “(c) PROHIBITION ON GENETIC INFORMATION AS
5 PREEXISTING CONDITION.—A health insurance issuer of-
6 fering health insurance coverage in the individual market
7 may not, on the basis of genetic information, impose any
8 preexisting condition exclusion (as defined in section
9 2701(b)(1)(A)) with respect to such coverage.

10 “(d) GENETIC TESTING.—

11 “(1) LIMITATION ON REQUESTING OR REQUIR-
12 ING GENETIC TESTING.—A health insurance issuer
13 offering health insurance coverage in the individual
14 market shall not request or require an individual or
15 a family member of such individual to undergo a ge-
16 netic test.

17 “(2) RULE OF CONSTRUCTION.—Paragraph (1)
18 shall not be construed to limit the authority of a
19 health care professional who is providing health care
20 services to an individual to request that such indi-
21 vidual undergo a genetic test.

22 “(3) RULE OF CONSTRUCTION REGARDING PAY-
23 MENT.—

24 “(A) IN GENERAL.—Nothing in paragraph
25 (1) shall be construed to preclude a health in-

1 surance issuer offering health insurance cov-
2 erage in the individual market from obtaining
3 and using the results of a genetic test in mak-
4 ing a determination regarding payment (as such
5 term is defined for the purposes of applying the
6 regulations promulgated by the Secretary under
7 part C of title XI of the Social Security Act and
8 section 264 of the Health Insurance Portability
9 and Accountability Act of 1996, as may be re-
10 vised from time to time) consistent with sub-
11 section (a) and (c).

12 “(B) LIMITATION.—For purposes of sub-
13 paragraph (A), a health insurance issuer offer-
14 ing health insurance coverage in the individual
15 market may request only the minimum amount
16 of information necessary to accomplish the in-
17 tended purpose.

18 “(4) RESEARCH EXCEPTION.—Notwithstanding
19 paragraph (1), a health insurance issuer offering
20 health insurance coverage in the individual market
21 may request, but not require, that an individual or
22 a family member of such individual undergo a ge-
23 netic test if each of the following conditions is met:

24 “(A) The request is made pursuant to re-
25 search that complies with part 46 of title 45,

1 Code of Federal Regulations, or equivalent Fed-
2 eral regulations, and any applicable State or
3 local law or regulations for the protection of
4 human subjects in research.

5 “(B) The issuer clearly indicates to each
6 individual, or in the case of a minor child, to
7 the legal guardian of such child, to whom the
8 request is made that—

9 “(i) compliance with the request is
10 voluntary; and

11 “(ii) non-compliance will have no ef-
12 fect on enrollment status or premium or
13 contribution amounts.

14 “(C) No genetic information collected or
15 acquired under this paragraph shall be used for
16 underwriting purposes.

17 “(D) The issuer notifies the Secretary in
18 writing that the issuer is conducting activities
19 pursuant to the exception provided for under
20 this paragraph, including a description of the
21 activities conducted.

22 “(E) The issuer complies with such other
23 conditions as the Secretary may by regulation
24 require for activities conducted under this para-
25 graph.

1 “(e) PROHIBITION ON COLLECTION OF GENETIC IN-
2 FORMATION.—

3 “(1) IN GENERAL.—A health insurance issuer
4 offering health insurance coverage in the individual
5 market shall not request, require, or purchase ge-
6 netic information for underwriting purposes (as de-
7 fined in section 2791).

8 “(2) PROHIBITION ON COLLECTION OF GE-
9 NETIC INFORMATION PRIOR TO ENROLLMENT.—A
10 health insurance issuer offering health insurance
11 coverage in the individual market shall not request,
12 require, or purchase genetic information with respect
13 to any individual prior to such individual’s enroll-
14 ment under the plan in connection with such enroll-
15 ment.

16 “(3) INCIDENTAL COLLECTION.—If a health in-
17 surance issuer offering health insurance coverage in
18 the individual market obtains genetic information in-
19 cidental to the requesting, requiring, or purchasing
20 of other information concerning any individual, such
21 request, requirement, or purchase shall not be con-
22 sidered a violation of paragraph (2) if such request,
23 requirement, or purchase is not in violation of para-
24 graph (1).

1 “(f) GENETIC INFORMATION OF A FETUS OR EM-
 2 BRYO.—Any reference in this part to genetic information
 3 concerning an individual or family member of an indi-
 4 vidual shall—

5 “(1) with respect to such an individual or fam-
 6 ily member of an individual who is a pregnant
 7 woman, include genetic information of any fetus car-
 8 ried by such pregnant woman; and

9 “(2) with respect to an individual or family
 10 member utilizing an assisted reproductive tech-
 11 nology, include genetic information of any embryo le-
 12 gally held by the individual or family member.”.

13 (2) REMEDIES AND ENFORCEMENT.—Section
 14 2761(b) of the Public Health Service Act (42 U.S.C.
 15 300gg–61(b)) is amended to read as follows:

16 “(b) SECRETARIAL ENFORCEMENT AUTHORITY.—
 17 The Secretary shall have the same authority in relation
 18 to enforcement of the provisions of this part with respect
 19 to issuers of health insurance coverage in the individual
 20 market in a State as the Secretary has under section
 21 2722(b)(2), and section 2722(b)(3) with respect to viola-
 22 tions of genetic nondiscrimination provisions, in relation
 23 to the enforcement of the provisions of part A with respect
 24 to issuers of health insurance coverage in the small group
 25 market in the State.”.

1 (c) ELIMINATION OF OPTION OF NON-FEDERAL
2 GOVERNMENTAL PLANS TO BE EXCEPTED FROM RE-
3 QUIREMENTS CONCERNING GENETIC INFORMATION.—
4 Section 2721(b)(2) of the Public Health Service Act (42
5 U.S.C. 300gg–21(b)(2)) is amended—

6 (1) in subparagraph (A), by striking “If the
7 plan sponsor” and inserting “Except as provided in
8 subparagraph (D), if the plan sponsor”; and

9 (2) by adding at the end the following:

10 “(D) ELECTION NOT APPLICABLE TO RE-
11 QUIREMENTS CONCERNING GENETIC INFORMA-
12 TION.—The election described in subparagraph
13 (A) shall not be available with respect to the
14 provisions of subsections (a)(1)(F), (b)(3), (c),
15 and (d) of section 2702 and the provisions of
16 sections 2701 and 2702(b) to the extent that
17 such provisions apply to genetic information.”.

18 (d) REGULATIONS AND EFFECTIVE DATE.—

19 (1) REGULATIONS.—Not later than 1 year after
20 the date of enactment of this Act, the Secretary of
21 Health and Human Services shall issue final regula-
22 tions to carry out the amendments made by this sec-
23 tion.

24 (2) EFFECTIVE DATE.—The amendments made
25 by this section shall apply—

1 (A) with respect to group health plans, and
 2 health insurance coverage offered in connection
 3 with group health plans, for plan years begin-
 4 ning after the date that is 18 months after the
 5 date of enactment of this Act; and

6 (B) with respect to health insurance cov-
 7 erage offered, sold, issued, renewed, in effect, or
 8 operated in the individual market after the date
 9 that is 18 months after the date of enactment
 10 of this Act.

11 **SEC. 103. AMENDMENTS TO THE INTERNAL REVENUE CODE**
 12 **OF 1986.**

13 (a) NO DISCRIMINATION IN GROUP PREMIUMS
 14 BASED ON GENETIC INFORMATION.—Subsection (b) of
 15 section 9802 of the Internal Revenue Code of 1986 is
 16 amended—

17 (1) in paragraph (2)(A), by inserting before the
 18 semicolon the following: “except as provided in para-
 19 graph (3)”; and

20 (2) by adding at the end the following:

21 “(3) NO GROUP-BASED DISCRIMINATION ON
 22 BASIS OF GENETIC INFORMATION.—For purposes of
 23 this section, a group health plan may not adjust pre-
 24 mium or contribution amounts for the group covered

1 under such plan on the basis of genetic informa-
2 tion.”.

3 (b) LIMITATIONS ON GENETIC TESTING; PROHIBI-
4 TION ON COLLECTION OF GENETIC INFORMATION; APPLI-
5 CATION TO ALL PLANS.—Section 9802 of such Code is
6 amended by redesignating subsection (c) as subsection (f)
7 and by inserting after subsection (b) the following new
8 subsections:

9 “(c) GENETIC TESTING.—

10 “(1) LIMITATION ON REQUESTING OR REQUIR-
11 ING GENETIC TESTING.—A group health plan may
12 not request or require an individual or a family
13 member of such individual to undergo a genetic test.

14 “(2) RULE OF CONSTRUCTION.—Paragraph (1)
15 shall not be construed to limit the authority of a
16 health care professional who is providing health care
17 services to an individual to request that such indi-
18 vidual undergo a genetic test.

19 “(3) RULE OF CONSTRUCTION REGARDING PAY-
20 MENT.—

21 “(A) IN GENERAL.—Nothing in paragraph
22 (1) shall be construed to preclude a group
23 health plan from obtaining and using the re-
24 sults of a genetic test in making a determina-
25 tion regarding payment (as such term is defined

1 for the purposes of applying the regulations
2 promulgated by the Secretary of Health and
3 Human Services under part C of title XI of the
4 Social Security Act and section 264 of the
5 Health Insurance Portability and Accountability
6 Act of 1996, as may be revised from time to
7 time) consistent with subsection (a).

8 “(B) LIMITATION.—For purposes of sub-
9 paragraph (A), a group health plan may re-
10 quest only the minimum amount of information
11 necessary to accomplish the intended purpose.

12 “(4) RESEARCH EXCEPTION.—Notwithstanding
13 paragraph (1), a group health plan may request, but
14 not require, that a participant or beneficiary under-
15 go a genetic test if each of the following conditions
16 is met:

17 “(A) The request is made pursuant to re-
18 search that complies with part 46 of title 45,
19 Code of Federal Regulations, or equivalent Fed-
20 eral regulations, and any applicable State or
21 local law or regulations for the protection of
22 human subjects in research.

23 “(B) The plan clearly indicates to each
24 participant or beneficiary, or in the case of a

1 minor child, to the legal guardian of such bene-
2 ficiary, to whom the request is made that—

3 “(i) compliance with the request is
4 voluntary; and

5 “(ii) non-compliance will have no ef-
6 fect on enrollment status or premium or
7 contribution amounts.

8 “(C) No genetic information collected or
9 acquired under this paragraph shall be used for
10 underwriting purposes.

11 “(D) The plan notifies the Secretary in
12 writing that the plan is conducting activities
13 pursuant to the exception provided for under
14 this paragraph, including a description of the
15 activities conducted.

16 “(E) The plan complies with such other
17 conditions as the Secretary may by regulation
18 require for activities conducted under this para-
19 graph.

20 “(d) PROHIBITION ON COLLECTION OF GENETIC IN-
21 FORMATION.—

22 “(1) IN GENERAL.—A group health plan shall
23 not request, require, or purchase genetic information
24 for underwriting purposes (as defined in section
25 9832).

1 “(2) PROHIBITION ON COLLECTION OF GE-
2 NETIC INFORMATION PRIOR TO ENROLLMENT.—A
3 group health plan shall not request, require, or pur-
4 chase genetic information with respect to any indi-
5 vidual prior to such individual’s enrollment under
6 the plan or in connection with such enrollment.

7 “(3) INCIDENTAL COLLECTION.—If a group
8 health plan obtains genetic information incidental to
9 the requesting, requiring, or purchasing of other in-
10 formation concerning any individual, such request,
11 requirement, or purchase shall not be considered a
12 violation of paragraph (2) if such request, require-
13 ment, or purchase is not in violation of paragraph
14 (1).

15 “(e) APPLICATION TO ALL PLANS.—The provisions
16 of subsections (a)(1)(F), (b)(3), (c), and (d) and sub-
17 section (b)(1) and section 9801 with respect to genetic in-
18 formation, shall apply to group health plans without re-
19 gard to section 9831(a)(2).”.

20 (c) APPLICATION TO GENETIC INFORMATION OF A
21 FETUS OR EMBRYO.—Such section is further amended by
22 adding at the end the following:

23 “(f) GENETIC INFORMATION OF A FETUS OR EM-
24 BRYO.—Any reference in this chapter to genetic informa-

1 tion concerning an individual or family member of an indi-
 2 vidual shall—

3 “(1) with respect to such an individual or fam-
 4 ily member of an individual who is a pregnant
 5 woman, include genetic information of any fetus car-
 6 ried by such pregnant woman; and

7 “(2) with respect to an individual or family
 8 member utilizing an assisted reproductive tech-
 9 nology, include genetic information of any embryo le-
 10 gally held by the individual or family member.”.

11 (d) DEFINITIONS.—Subsection (d) of section 9832 of
 12 such Code is amended by adding at the end the following:

13 “(6) FAMILY MEMBER.—The term ‘family
 14 member’ means, with respect to any individual—

15 “(A) a dependent (as such term is used for
 16 purposes of section 9801(f)(2)) of such indi-
 17 vidual, and

18 “(B) any other individual who is a first-de-
 19 gree, second-degree, third-degree, or fourth-de-
 20 gree relative of such individual or of an indi-
 21 vidual described in subparagraph (A).

22 “(7) GENETIC INFORMATION.—

23 “(A) IN GENERAL.—The term ‘genetic in-
 24 formation’ means, with respect to any indi-
 25 vidual, information about—

1 “(i) such individual’s genetic tests,
2 “(ii) the genetic tests of family mem-
3 bers of such individual, and
4 “(iii) subject to subparagraph (D),
5 the manifestation of a disease or disorder
6 in family members of such individual.

7 “(B) INCLUSION OF GENETIC SERVICES.—
8 Such term includes, with respect to any indi-
9 vidual, any request for, or receipt of, genetic
10 services (including genetic services received pur-
11 suant to participation in clinical research) by
12 such individual or any family member of such
13 individual.

14 “(C) EXCLUSIONS.—The term ‘genetic in-
15 formation’ shall not include information about
16 the sex or age of any individual.

17 “(D) APPLICATION TO FAMILY MEMBERS
18 COVERED UNDER SAME PLAN.—Information de-
19 scribed in clause (iii) of subparagraph (A) shall
20 not be treated as genetic information to the ex-
21 tent that such information is taken into account
22 only with respect to the individual in which
23 such disease or disorder is manifested and not
24 as genetic information with respect to any other
25 individual.

1 “(8) GENETIC TEST.—

2 “(A) IN GENERAL.—The term ‘genetic
3 test’ means an analysis of human DNA, RNA,
4 chromosomes, proteins, or metabolites, that de-
5 tects genotypes, mutations, or chromosomal
6 changes.

7 “(B) EXCEPTIONS.—The term ‘genetic
8 test’ does not mean—

9 “(i) an analysis of proteins or metabo-
10 lites that does not detect genotypes,
11 mutations, or chromosomal changes, or

12 “(ii) an analysis of proteins or me-
13 tabolites that is directly related to a mani-
14 fested disease, disorder, or pathological
15 condition that could reasonably be detected
16 by a health care professional with appro-
17 priate training and expertise in the field of
18 medicine involved.

19 “(9) GENETIC SERVICES.—The term ‘genetic
20 services’ means—

21 “(A) a genetic test;

22 “(B) genetic counseling (including obtain-
23 ing, interpreting, or assessing genetic informa-
24 tion); or

25 “(C) genetic education.

1 “(10) UNDERWRITING PURPOSES.—The term
 2 ‘underwriting purposes’ means, with respect to any
 3 group health plan ,or health insurance coverage of-
 4 fered in connection with a group health plan—

5 “(A) rules for, or determination of, eligi-
 6 bility (including enrollment and continued eligi-
 7 bility) for benefits under the plan or coverage;

8 “(B) the computation of premium or con-
 9 tribution amounts under the plan or coverage;

10 “(C) the application of any pre-existing
 11 condition exclusion under the plan or coverage;
 12 and

13 “(D) other activities related to the cre-
 14 ation, renewal, or replacement of a contract of
 15 health insurance or health benefits.”.

16 (e) ENFORCEMENT.—

17 (1) IN GENERAL.—Subchapter C of chapter
 18 100 of the Internal Revenue Code of 1986 (relating
 19 to general provisions) is amended by adding at the
 20 end the following new section:

21 **“SEC. 9834. ENFORCEMENT.**

22 “For the imposition of tax on any failure of a group
 23 health plan to meet the requirements of this chapter, see
 24 section 4980D.”.

1 (2) CONFORMING AMENDMENT.—The table of
2 sections for subchapter C of chapter 100 of such
3 Code is amended by adding at the end the following
4 new item:

“Sec. 9834. Enforcement.”.

5 (f) REGULATIONS AND EFFECTIVE DATE.—

6 (1) REGULATIONS.—The Secretary of the
7 Treasury shall issue final regulations or other guid-
8 ance not later than 1 year after the date of the en-
9 actment of this Act to carry out the amendments
10 made by this section.

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

16 **SEC. 104. AMENDMENTS TO TITLE XVIII OF THE SOCIAL SE-**
17 **CURITY ACT RELATING TO MEDIGAP.**

18 (a) NONDISCRIMINATION.—Section 1882(s)(2) of the
19 Social Security Act (42 U.S.C. 1395ss(s)(2)) is amended
20 by adding at the end the following:

21 “(E) An issuer of a medicare supplemental
22 policy shall not deny or condition the issuance
23 or effectiveness of the policy (including the im-
24 position of any exclusion of benefits under the
25 policy based on a pre-existing condition) and

1 shall not discriminate in the pricing of the pol-
 2 icy (including the adjustment of premium rates)
 3 of an individual on the basis of the genetic in-
 4 formation with respect to such individual.”.

5 (b) LIMITATIONS ON GENETIC TESTING AND GE-
 6 NETIC INFORMATION.—

7 (1) IN GENERAL.—Section 1882 of the Social
 8 Security Act (42 U.S.C. 1395ss) is amended by add-
 9 ing at the end the following:

10 “(x) LIMITATIONS ON GENETIC TESTING AND IN-
 11 FORMATION.—

12 “(1) GENETIC TESTING.—

13 “(A) LIMITATION ON REQUESTING OR RE-
 14 QUIRING GENETIC TESTING.—An issuer of a
 15 medicare supplemental policy shall not request
 16 or require an individual or a family member of
 17 such individual to undergo a genetic test.

18 “(B) RULE OF CONSTRUCTION.—Subpara-
 19 graph (A) shall not be construed to limit the
 20 authority of a health care professional who is
 21 providing health care services to an individual
 22 to request that such individual undergo a ge-
 23 netic test.

24 “(C) RULE OF CONSTRUCTION REGARDING
 25 PAYMENT.—

1 “(i) IN GENERAL.—Nothing in sub-
2 paragraph (A) shall be construed to pre-
3 clude an issuer of a medicare supplemental
4 policy from obtaining and using the results
5 of a genetic test in making a determination
6 regarding payment (as such term is de-
7 fined for the purposes of applying the reg-
8 ulations promulgated by the Secretary
9 under part C of title XI and section 264
10 of the Health Insurance Portability and
11 Accountability Act of 1996, as may be re-
12 vised from time to time) consistent with
13 subsection (s)(2)(E).

14 “(ii) LIMITATION.—For purposes of
15 clause (i), an issuer of a medicare supple-
16 mental policy may request only the min-
17 imum amount of information necessary to
18 accomplish the intended purpose.

19 “(D) RESEARCH EXCEPTION.—Notwith-
20 standing subparagraph (A), an issuer of a
21 medicare supplemental policy may request, but
22 not require, that an individual or a family mem-
23 ber of such individual undergo a genetic test if
24 each of the following conditions is met:

1 “(i) The request is made pursuant to
2 research that complies with part 46 of title
3 45, Code of Federal Regulations, or equiv-
4 alent Federal regulations, and any applica-
5 ble State or local law or regulations for the
6 protection of human subjects in research.

7 “(ii) The issuer clearly indicates to
8 each individual, or in the case of a minor
9 child, to the legal guardian of such child,
10 to whom the request is made that—

11 “(I) compliance with the request
12 is voluntary; and

13 “(II) non-compliance will have no
14 effect on enrollment status or pre-
15 mium or contribution amounts.

16 “(iii) No genetic information collected
17 or acquired under this subparagraph shall
18 be used for underwriting, determination of
19 eligibility to enroll or maintain enrollment
20 status, premium rating, or the creation, re-
21 newal, or replacement of a plan, contract,
22 or coverage for health insurance or health
23 benefits.

24 “(iv) The issuer notifies the Secretary
25 in writing that the issuer is conducting ac-

1 activities pursuant to the exception provided
2 for under this subparagraph, including a
3 description of the activities conducted.

4 “(v) The issuer complies with such
5 other conditions as the Secretary may by
6 regulation require for activities conducted
7 under this subparagraph.

8 “(2) PROHIBITION ON COLLECTION OF GE-
9 NETIC INFORMATION.—

10 “(A) IN GENERAL.—An issuer of a medi-
11 care supplemental policy shall not request, re-
12 quire, or purchase genetic information for un-
13 derwriting purposes (as defined in paragraph
14 (3)).

15 “(B) PROHIBITION ON COLLECTION OF
16 GENETIC INFORMATION PRIOR TO ENROLL-
17 MENT.—An issuer of a medicare supplemental
18 policy shall not request, require, or purchase ge-
19 netic information with respect to any individual
20 prior to such individual’s enrollment under the
21 policy in connection with such enrollment.

22 “(C) INCIDENTAL COLLECTION.—If an
23 issuer of a medicare supplemental policy obtains
24 genetic information incidental to the requesting,
25 requiring, or purchasing of other information

1 concerning any individual, such request, re-
2 quirement, or purchase shall not be considered
3 a violation of subparagraph (B) if such request,
4 requirement, or purchase is not in violation of
5 subparagraph (A).

6 “(3) DEFINITIONS.—In this subsection:

7 “(A) FAMILY MEMBER.—The term ‘family
8 member’ means with respect to an individual,
9 any other individual who is a first-degree, sec-
10 ond-degree, third-degree, or fourth-degree rel-
11 ative of such individual.

12 “(B) GENETIC INFORMATION.—

13 “(i) IN GENERAL.—The term ‘genetic
14 information’ means, with respect to any in-
15 dividual, information about—

16 “(I) such individual’s genetic
17 tests,

18 “(II) the genetic tests of family
19 members of such individual, and

20 “(III) subject to clause (iv), the
21 manifestation of a disease or disorder
22 in family members of such individual.

23 “(ii) INCLUSION OF GENETIC SERV-
24 ICES.—Such term includes, with respect to
25 any individual, any request for, or receipt

1 of, genetic services (including genetic serv-
2 ices received pursuant to participation in
3 clinical research) by such individual or any
4 family member of such individual.

5 “(iii) EXCLUSIONS.—The term ‘ge-
6 netic information’ shall not include infor-
7 mation about the sex or age of any indi-
8 vidual.

9 “(C) GENETIC TEST.—

10 “(i) IN GENERAL.—The term ‘genetic
11 test’ means an analysis of human DNA,
12 RNA, chromosomes, proteins, or metabo-
13 lites, that detects genotypes, mutations, or
14 chromosomal changes.

15 “(ii) EXCEPTIONS.—The term ‘genetic
16 test’ does not mean—

17 “(I) an analysis of proteins or
18 metabolites that does not detect
19 genotypes, mutations, or chromosomal
20 changes; or

21 “(II) an analysis of proteins or
22 metabolites that is directly related to
23 a manifested disease, disorder, or
24 pathological condition that could rea-
25 sonably be detected by a health care

1 professional with appropriate training
2 and expertise in the field of medicine
3 involved.

4 “(D) GENETIC SERVICES.—The term ‘ge-
5 netic services’ means—

6 “(i) a genetic test;

7 “(ii) genetic counseling (including ob-
8 taining, interpreting, or assessing genetic
9 information); or

10 “(iii) genetic education.

11 “(E) UNDERWRITING PURPOSES.—The
12 term ‘underwriting purposes’ means, with re-
13 spect to a medicare supplemental policy—

14 “(i) rules for, or determination of, eli-
15 gibility (including enrollment and contin-
16 ued eligibility) for benefits under the pol-
17 icy;

18 “(ii) the computation of premium or
19 contribution amounts under the policy;

20 “(iii) the application of any pre-exist-
21 ing condition exclusion under the policy;
22 and

23 “(iv) other activities related to the
24 creation, renewal, or replacement of a con-

1 tract of health insurance or health bene-
2 fits.

3 “(F) ISSUER OF A MEDICARE SUPPLE-
4 MENTAL POLICY.—The term ‘issuer of a medi-
5 care supplemental policy’ includes a third-party
6 administrator or other person acting for or on
7 behalf of such issuer.”.

8 (2) APPLICATION TO GENETIC INFORMATION OF
9 A FETUS OR EMBRYO.—Section 1882(x) of such Act,
10 as added by paragraph (1), is further amended by
11 adding at the end the following:

12 “(4) GENETIC INFORMATION OF A FETUS OR
13 EMBRYO.—Any reference in this section to genetic
14 information concerning an individual or family mem-
15 ber of an individual shall—

16 “(A) with respect to such an individual or
17 family member of an individual who is a preg-
18 nant woman, include genetic information of any
19 fetus carried by such pregnant woman; and

20 “(B) with respect to an individual or fam-
21 ily member utilizing an assisted reproductive
22 technology, include genetic information of any
23 embryo legally held by the individual or family
24 member.”.

1 (3) CONFORMING AMENDMENT.—Section
2 1882(o) of the Social Security Act (42 U.S.C.
3 1395ss(o)) is amended by adding at the end the fol-
4 lowing:

5 “(4) The issuer of the medicare supplemental
6 policy complies with subsection (s)(2)(E) and sub-
7 section (x).”.

8 (c) EFFECTIVE DATE.—The amendments made by
9 this section shall apply with respect to an issuer of a medi-
10 care supplemental policy for policy years beginning on or
11 after the date that is 18 months after the date of enact-
12 ment of this Act.

13 (d) TRANSITION PROVISIONS.—

14 (1) IN GENERAL.—If the Secretary of Health
15 and Human Services identifies a State as requiring
16 a change to its statutes or regulations to conform its
17 regulatory program to the changes made by this sec-
18 tion, the State regulatory program shall not be con-
19 sidered to be out of compliance with the require-
20 ments of section 1882 of the Social Security Act due
21 solely to failure to make such change until the date
22 specified in paragraph (4).

23 (2) NAIC STANDARDS.—If, not later than June
24 30, 2008, the National Association of Insurance
25 Commissioners (in this subsection referred to as the

1 “NAIC”) modifies its NAIC Model Regulation relat-
2 ing to section 1882 of the Social Security Act (re-
3 ferred to in such section as the 1991 NAIC Model
4 Regulation, as subsequently modified) to conform to
5 the amendments made by this section, such revised
6 regulation incorporating the modifications shall be
7 considered to be the applicable NAIC model regula-
8 tion (including the revised NAIC model regulation
9 and the 1991 NAIC Model Regulation) for the pur-
10 poses of such section.

11 (3) SECRETARY STANDARDS.—If the NAIC
12 does not make the modifications described in para-
13 graph (2) within the period specified in such para-
14 graph, the Secretary of Health and Human Services
15 shall, not later than October 1, 2008, make the
16 modifications described in such paragraph and such
17 revised regulation incorporating the modifications
18 shall be considered to be the appropriate regulation
19 for the purposes of such section.

20 (4) DATE SPECIFIED.—

21 (A) IN GENERAL.—Subject to subpara-
22 graph (B), the date specified in this paragraph
23 for a State is the earlier of—

24 (i) the date the State changes its stat-
25 utes or regulations to conform its regu-

latory program to the changes made by
this section, or

(ii) October 1, 2008.

(B) ADDITIONAL LEGISLATIVE ACTION REQUIRED.—In the case of a State which the Secretary identifies as—

(i) requiring State legislation (other than legislation appropriating funds) to conform its regulatory program to the changes made in this section, but

(ii) having a legislature which is not scheduled to meet in 2008 in a legislative session in which such legislation may be considered, the date specified in this paragraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after July 1, 2008.

For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

1 **SEC. 105. PRIVACY AND CONFIDENTIALITY.**

2 (a) IN GENERAL.—Part C of title XI of the Social
3 Security Act is amended by adding at the end the fol-
4 lowing new section:

5 “APPLICATION OF HIPAA REGULATIONS TO GENETIC
6 INFORMATION

7 “SEC. 1180. (a) IN GENERAL.—The Secretary shall
8 revise the HIPAA privacy regulation (as defined in sub-
9 section (b)) so it is consistent with the following:

10 “(1) Genetic information shall be treated as
11 health information described in section 1171(4)(B).

12 “(2) The use or disclosure by a covered entity
13 that is a group health plan, health insurance issuer
14 that issues health insurance coverage, or issuer of a
15 medicare supplemental policy of protected health in-
16 formation that is genetic information about an indi-
17 vidual for underwriting purposes under the group
18 health plan, health insurance coverage, or medicare
19 supplemental policy shall not be a permitted use or
20 disclosure.

21 “(b) DEFINITIONS.—For purposes of this section:

22 “(1) GENETIC INFORMATION; GENETIC TEST;
23 FAMILY MEMBER.—The terms ‘genetic information’,
24 ‘genetic test’, and ‘family member’ have the mean-
25 ings given such terms in section 2791 of the Public
26 Health Service Act (42 U.S.C. 300gg–91), as

1 amended by the Genetic Information Nondiscrimina-
2 tion Act of 2007.

3 “(2) GROUP HEALTH PLAN; HEALTH INSUR-
4 ANCE COVERAGE; MEDICARE SUPPLEMENTAL POL-
5 ICY.—The terms ‘group health plan’ and ‘health in-
6 surance coverage’ have the meanings given such
7 terms under section 2791 of the Public Health Serv-
8 ice Act (42 U.S.C. 300gg–91), and the term ‘medi-
9 care supplemental policy’ has the meaning given
10 such term in section 1882(g).

11 “(3) HIPAA PRIVACY REGULATION.—The term
12 ‘HIPAA privacy regulation’ means the regulations
13 promulgated by the Secretary under this part and
14 section 264 of the Health Insurance Portability and
15 Accountability Act of 1996 (42 U.S.C. 1320d–2
16 note).

17 “(4) UNDERWRITING PURPOSES.—The term
18 ‘underwriting purposes’ means, with respect to a
19 group health plan, health insurance coverage, or a
20 medicare supplemental policy—

21 “(A) rules for eligibility (including enroll-
22 ment and continued eligibility) for, or deter-
23 mination of, benefits under the plan, coverage,
24 or policy;

1 “(B) the computation of premium or con-
2 tribution amounts under the plan, coverage, or
3 policy;

4 “(C) the application of any pre-existing
5 condition exclusion under the plan, coverage, or
6 policy; and

7 “(D) other activities related to the cre-
8 ation, renewal, or replacement of a contract of
9 health insurance or health benefits.

10 “(c) PROCEDURE.—The revisions under subsection
11 (a) shall be made by notice in the Federal Register pub-
12 lished not later than 60 days after the date of the enact-
13 ment of this section and shall be effective upon publica-
14 tion, without opportunity for any prior public comment,
15 but may be revised, consistent with this section, after op-
16 portunity for public comment.

17 “(d) ENFORCEMENT.—In addition to any other sanc-
18 tions or remedies that may be available under law, a cov-
19 ered entity that is a group health plan, health insurance
20 issuer, or issuer of a medicare supplemental policy and
21 that violates the HIPAA privacy regulation (as revised
22 under subsection (a) or otherwise) with respect to the use
23 or disclosure of genetic information shall be subject to the
24 penalties described in sections 1176 and 1177 in the same

1 manner and to the same extent that such penalties apply
2 to violations of this part.”.

3 (b) REGULATIONS; EFFECTIVE DATE.—

4 (1) REGULATIONS.—Not later than 1 year after
5 the date of the enactment of this Act, the Secretary
6 of Health and Human Services shall issue final reg-
7 ulations to carry out the revision required by section
8 1180(a) of the Social Security Act, as added by sub-
9 section (a). The Secretary has the sole authority to
10 promulgate such regulations, but shall promulgate
11 such regulations in consultation with the Secretaries
12 of Labor and the Treasury.

13 (2) EFFECTIVE DATE.—The amendment made
14 by subsection (a) shall take effect on the date that
15 is 18 months after the date of the enactment of this
16 Act.

17 **SEC. 106. ASSURING COORDINATION.**

18 Except as provided in section 105(b)(1), the Sec-
19 retary of Health and Human Services, the Secretary of
20 Labor, and the Secretary of the Treasury shall ensure,
21 through the execution of an interagency memorandum of
22 understanding among such Secretaries, that—

23 (1) regulations, rulings, and interpretations
24 issued by such Secretaries relating to the same mat-
25 ter over which two or more such Secretaries have re-

sponsibility 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:

(1) COMMISSION.—The term “Commission” means the Equal Employment Opportunity Commission as created by section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–4).

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

(A) IN GENERAL.—The term “employee” means—

(i) an employee (including an applicant), as defined in section 701(f) of the

1 Civil Rights Act of 1964 (42 U.S.C.
2 2000e(f));

3 (ii) a State employee (including an ap-
4 plicant) described in section 304(a) of the
5 Government Employee Rights Act of 1991
6 (42 U.S.C. 2000e–16e(a));

7 (iii) a covered employee (including an
8 applicant), as defined in section 101 of the
9 Congressional Accountability Act of 1995
10 (2 U.S.C. 1301);

11 (iv) a covered employee (including an
12 applicant), as defined in section 411(c) of
13 title 3, United States Code; or

14 (v) an employee or applicant to which
15 section 717(a) of the Civil Rights Act of
16 1964 (42 U.S.C. 2000e–16(a)) applies.

17 (B) EMPLOYER.—The term “employer”
18 means—

19 (i) an employer (as defined in section
20 701(b) of the Civil Rights Act of 1964 (42
21 U.S.C. 2000e(b)));

22 (ii) an entity employing a State em-
23 ployee described in section 304(a) of the
24 Government Employee Rights Act of 1991;

1 (iii) an employing office, as defined in
2 section 101 of the Congressional Account-
3 ability Act of 1995;

4 (iv) an employing office, as defined in
5 section 411(c) of title 3, United States
6 Code; or

7 (v) an entity to which section 717(a)
8 of the Civil Rights Act of 1964 applies.

9 (C) EMPLOYMENT AGENCY; LABOR ORGA-
10 NIZATION.—The terms “employment agency”
11 and “labor organization” have the meanings
12 given the terms in section 701 of the Civil
13 Rights Act of 1964 (42 U.S.C. 2000e).

14 (D) MEMBER.—The term “member”, with
15 respect to a labor organization, includes an ap-
16 plicant for membership in a labor organization.

17 (3) FAMILY MEMBER.—The term “family mem-
18 ber” means, with respect to an individual—

19 (A) a dependent (as such term is used for
20 purposes of section 701(f)(2) of the Employee
21 Retirement Income Security Act of 1974) of
22 such individual, and

23 (B) any other individual who is a first-de-
24 gree, second-degree, third-degree, or fourth-de-

gree relative of such individual or of an individual described in subparagraph (A).

(4) GENETIC INFORMATION.—

(A) IN GENERAL.—The term “genetic information” means, with respect to any individual, information about—

(i) such individual’s genetic tests,

(ii) the genetic tests of family members of such individual, and

(iii) subject to subparagraph (D), the manifestation of a disease or disorder in family members of such individual.

(B) INCLUSION OF GENETIC SERVICES.—

Such term includes, with respect to any individual, any request for, or receipt of, genetic services (including genetic services received pursuant to participation in clinical research) by such individual or any family member of such individual.

(C) EXCLUSIONS.—The term “genetic information” shall not include information about the sex or age of any individual.

(5) GENETIC MONITORING.—The term “genetic monitoring” means the periodic examination of employees to evaluate acquired modifications to their

1 genetic material, such as chromosomal damage or
2 evidence of increased occurrence of mutations, that
3 may have developed in the course of employment due
4 to exposure to toxic substances in the workplace, in
5 order to identify, evaluate, and respond to the ef-
6 fects of or control adverse environmental exposures
7 in the workplace.

8 (6) GENETIC SERVICES.—The term “genetic
9 services” means—

10 (A) a genetic test;

11 (B) genetic counseling (including obtain-
12 ing, interpreting, or assessing genetic informa-
13 tion); or

14 (C) genetic education.

15 (7) GENETIC TEST.—

16 (A) IN GENERAL.—The term “genetic
17 test” means an analysis of human DNA, RNA,
18 chromosomes, proteins, or metabolites, that de-
19 tects genotypes, mutations, or chromosomal
20 changes.

21 (B) EXCEPTIONS.—The term “genetic
22 test” does not mean an analysis of proteins or
23 metabolites that does not detect genotypes,
24 mutations, or chromosomal changes.

1 **SEC. 202. EMPLOYER PRACTICES.**

2 (a) DISCRIMINATION BASED ON GENETIC INFORMA-
3 TION.—It shall be an unlawful employment practice for
4 an employer—

5 (1) to fail or refuse to hire, or to discharge, any
6 employee, or otherwise to discriminate against any
7 employee with respect to the compensation, terms,
8 conditions, or privileges of employment of the em-
9 ployee, because of genetic information with respect
10 to the employee; or

11 (2) to limit, segregate, or classify the employees
12 of the employer in any way that would deprive or
13 tend to deprive any employee of employment oppor-
14 tunities or otherwise adversely affect the status of
15 the employee as an employee, because of genetic in-
16 formation with respect to the employee.

17 (b) ACQUISITION OF GENETIC INFORMATION.—It
18 shall be an unlawful employment practice for an employer
19 to request, require, or purchase genetic information with
20 respect to an employee or a family member of the em-
21 ployee except—

22 (1) where an employer inadvertently requests or
23 requires family medical history of the employee or
24 family member of the employee;

25 (2) where—

1 (A) health or genetic services are offered
2 by the employer, including such services offered
3 as part of a bona fide wellness program;

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

6 (C) only the employee (or family member
7 if the family member is receiving genetic serv-
8 ices) and the licensed health care professional
9 or board certified genetic counselor involved in
10 providing such services receive individually iden-
11 tifiable information concerning the results of
12 such services; and

13 (D) any individually identifiable genetic in-
14 formation provided under subparagraph (C) in
15 connection with the services provided under
16 subparagraph (A) is only available for purposes
17 of such services and shall not be disclosed to
18 the employer except in aggregate terms that do
19 not disclose the identity of specific employees;

20 (3) where an employer requests or requires
21 family medical history from the employee to comply
22 with the certification provisions of section 103 of the
23 Family and Medical Leave Act of 1993 (29 U.S.C.
24 2613) or such requirements under State family and
25 medical leave laws;

1 (4) where an employer purchases documents
2 that are commercially and publicly available (includ-
3 ing newspapers, magazines, periodicals, and books,
4 but not including medical databases or court
5 records) that include family medical history;

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

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

11 (B)(i) the employee provides prior, know-
12 ing, voluntary, and written authorization; or

13 (ii) the genetic monitoring is required by
14 Federal or State law;

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

17 (D) the monitoring is in compliance with—

18 (i) any Federal genetic monitoring
19 regulations, including any such regulations
20 that may be promulgated by the Secretary
21 of Labor pursuant to the Occupational
22 Safety and Health Act of 1970 (29 U.S.C.
23 651 et seq.), the Federal Mine Safety and
24 Health Act of 1977 (30 U.S.C. 801 et

1 seq.), or the Atomic Energy Act of 1954
2 (42 U.S.C. 2011 et seq.); or

3 (ii) State genetic monitoring regula-
4 tions, in the case of a State that is imple-
5 menting genetic monitoring regulations
6 under the authority of the Occupational
7 Safety and Health Act of 1970 (29 U.S.C.
8 651 et seq.); and

9 (E) the employer, excluding any licensed
10 health care professional or board certified ge-
11 netic counselor that is involved in the genetic
12 monitoring program, receives the results of the
13 monitoring only in aggregate terms that do not
14 disclose the identity of specific employees; or

15 (6) where the employer conducts DNA analysis
16 for law enforcement purposes as a forensic labora-
17 tory, includes such analysis in the Combined DNA
18 Index System pursuant to section 210304 of the
19 Violent Crime Control and Law Enforcement Act of
20 1994 (42 U.S.C. 14132), and requests or requires
21 genetic information of such employer's employees,
22 but only to the extent that such genetic information
23 is used for analysis of DNA identification markers
24 for quality control to detect sample contamination.

1 (c) PRESERVATION OF PROTECTIONS.—In the case
2 of information to which any of paragraphs (1) through
3 (6) of subsection (b) applies, such information may not
4 be used in violation of paragraph (1) or (2) of subsection
5 (a) or treated or disclosed in a manner that violates sec-
6 tion 206.

7 **SEC. 203. EMPLOYMENT AGENCY PRACTICES.**

8 (a) DISCRIMINATION BASED ON GENETIC INFORMA-
9 TION.—It shall be an unlawful employment practice for
10 an employment agency—

11 (1) to fail or refuse to refer for employment, or
12 otherwise to discriminate against, any individual be-
13 cause of genetic information with respect to the indi-
14 vidual;

15 (2) to limit, segregate, or classify individuals or
16 fail or refuse to refer for employment any individual
17 in any way that would deprive or tend to deprive any
18 individual of employment opportunities, or otherwise
19 adversely affect the status of the individual as an
20 employee, because of genetic information with re-
21 spect to the individual; or

22 (3) to cause or attempt to cause an employer to
23 discriminate against an individual in violation of this
24 title.

1 (b) ACQUISITION OF GENETIC INFORMATION.—It
2 shall be an unlawful employment practice for an employ-
3 ment agency to request, require, or purchase genetic infor-
4 mation with respect to an individual or a family member
5 of the individual except—

6 (1) where an employment agency inadvertently
7 requests or requires family medical history of the in-
8 dividual or family member of the individual;

9 (2) where—

10 (A) health or genetic services are offered
11 by the employment agency, including such serv-
12 ices offered as part of a bona fide wellness pro-
13 gram;

14 (B) the individual provides prior, knowing,
15 voluntary, and written authorization;

16 (C) only the individual (or family member
17 if the family member is receiving genetic serv-
18 ices) and the licensed health care professional
19 or board certified genetic counselor involved in
20 providing such services receive individually iden-
21 tifiable information concerning the results of
22 such services; and

23 (D) any individually identifiable genetic in-
24 formation provided under subparagraph (C) in
25 connection with the services provided under

1 subparagraph (A) is only available for purposes
2 of such services and shall not be disclosed to
3 the employment agency except in aggregate
4 terms that do not disclose the identity of spe-
5 cific individuals;

6 (3) where an employment agency requests or re-
7 quires family medical history from the individual to
8 comply with the certification provisions of section
9 103 of the Family and Medical Leave Act of 1993
10 (29 U.S.C. 2613) or such requirements under State
11 family and medical leave laws;

12 (4) where an employment agency purchases
13 documents that are commercially and publicly avail-
14 able (including newspapers, magazines, periodicals,
15 and books, but not including medical databases or
16 court records) that include family medical history; or

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

20 (A) the employment agency provides writ-
21 ten notice of the genetic monitoring to the indi-
22 vidual;

23 (B)(i) the individual provides prior, know-
24 ing, voluntary, and written authorization; or

1 (ii) the genetic monitoring is required by
2 Federal or State law;

3 (C) the individual is informed of individual
4 monitoring results;

5 (D) the monitoring is in compliance with—

6 (i) any Federal genetic monitoring
7 regulations, including any such regulations
8 that may be promulgated by the Secretary
9 of Labor pursuant to the Occupational
10 Safety and Health Act of 1970 (29 U.S.C.
11 651 et seq.), the Federal Mine Safety and
12 Health Act of 1977 (30 U.S.C. 801 et
13 seq.), or the Atomic Energy Act of 1954
14 (42 U.S.C. 2011 et seq.); or

15 (ii) State genetic monitoring regula-
16 tions, in the case of a State that is imple-
17 menting genetic monitoring regulations
18 under the authority of the Occupational
19 Safety and Health Act of 1970 (29 U.S.C.
20 651 et seq.); and

21 (E) the employment agency, excluding any
22 licensed health care professional or board cer-
23 tified genetic counselor that is involved in the
24 genetic monitoring program, receives the results
25 of the monitoring only in aggregate terms that

1 do not disclose the identity of specific individ-
2 uals.

3 (c) PRESERVATION OF PROTECTIONS.—In the case
4 of information to which any of paragraphs (1) through
5 (5) of subsection (b) applies, such information may not
6 be used in violation of paragraph (1), (2), or (3) of sub-
7 section (a) or treated or disclosed in a manner that vio-
8 lates section 206.

9 **SEC. 204. LABOR ORGANIZATION PRACTICES.**

10 (a) DISCRIMINATION BASED ON GENETIC INFORMA-
11 TION.—It shall be an unlawful employment practice for
12 a labor organization—

13 (1) to exclude or to expel from the membership
14 of the organization, or otherwise to discriminate
15 against, any member because of genetic information
16 with respect to the member;

17 (2) to limit, segregate, or classify the members
18 of the organization, or fail or refuse to refer for em-
19 ployment any member, in any way that would de-
20 prive or tend to deprive any member of employment
21 opportunities, or otherwise adversely affect the sta-
22 tus of the member as an employee, because of ge-
23 netic information with respect to the member; or

1 (3) to cause or attempt to cause an employer to
2 discriminate against a member in violation of this
3 title.

4 (b) ACQUISITION OF GENETIC INFORMATION.—It
5 shall be an unlawful employment practice for a labor orga-
6 nization to request, require, or purchase genetic informa-
7 tion with respect to a member or a family member of the
8 member except—

9 (1) where a labor organization inadvertently re-
10 quests or requires family medical history of the
11 member or family member of the member;

12 (2) where—

13 (A) health or genetic services are offered
14 by the labor organization, including such serv-
15 ices offered as part of a bona fide wellness pro-
16 gram;

17 (B) the member provides prior, knowing,
18 voluntary, and written authorization;

19 (C) only the member (or family member if
20 the family member is receiving genetic services)
21 and the licensed health care professional or
22 board certified genetic counselor involved in
23 providing such services receive individually iden-
24 tifiable information concerning the results of
25 such services; and

1 (D) any individually identifiable genetic in-
2 formation provided under subparagraph (C) in
3 connection with the services provided under
4 subparagraph (A) is only available for purposes
5 of such services and shall not be disclosed to
6 the labor organization except in aggregate
7 terms that do not disclose the identity of spe-
8 cific members;

9 (3) where a labor organization requests or re-
10 quires family medical history from the members to
11 comply with the certification provisions of section
12 103 of the Family and Medical Leave Act of 1993
13 (29 U.S.C. 2613) or such requirements under State
14 family and medical leave laws;

15 (4) where a labor organization purchases docu-
16 ments that are commercially and publicly available
17 (including newspapers, magazines, periodicals, and
18 books, but not including medical databases or court
19 records) that include family medical history; or

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

23 (A) the labor organization provides written
24 notice of the genetic monitoring to the member;

1 (B)(i) the member provides prior, knowing,
2 voluntary, and written authorization; or

3 (ii) the genetic monitoring is required by
4 Federal or State law;

5 (C) the member is informed of individual
6 monitoring results;

7 (D) the monitoring is in compliance with—

8 (i) any Federal genetic monitoring
9 regulations, including any such regulations
10 that may be promulgated by the Secretary
11 of Labor pursuant to the Occupational
12 Safety and Health Act of 1970 (29 U.S.C.
13 651 et seq.), the Federal Mine Safety and
14 Health Act of 1977 (30 U.S.C. 801 et
15 seq.), or the Atomic Energy Act of 1954
16 (42 U.S.C. 2011 et seq.); or

17 (ii) State genetic monitoring regula-
18 tions, in the case of a State that is imple-
19 menting genetic monitoring regulations
20 under the authority of the Occupational
21 Safety and Health Act of 1970 (29 U.S.C.
22 651 et seq.); and

23 (E) the labor organization, excluding any
24 licensed health care professional or board cer-
25 tified genetic counselor that is involved in the

1 genetic monitoring program, receives the results
2 of the monitoring only in aggregate terms that
3 do not disclose the identity of specific members.

4 (c) PRESERVATION OF PROTECTIONS.—In the case
5 of information to which any of paragraphs (1) through
6 (5) of subsection (b) applies, such information may not
7 be used in violation of paragraph (1), (2), or (3) of sub-
8 section (a) or treated or disclosed in a manner that vio-
9 lates section 206.

10 **SEC. 205. TRAINING PROGRAMS.**

11 (a) DISCRIMINATION BASED ON GENETIC INFORMA-
12 TION.—It shall be an unlawful employment practice for
13 any employer, labor organization, or joint labor-manage-
14 ment committee controlling apprenticeship or other train-
15 ing or retraining, including on-the-job training pro-
16 grams—

17 (1) to discriminate against any individual be-
18 cause of genetic information with respect to the indi-
19 vidual in admission to, or employment in, any pro-
20 gram established to provide apprenticeship or other
21 training or retraining;

22 (2) to limit, segregate, or classify the applicants
23 for or participants in such apprenticeship or other
24 training or retraining, or fail or refuse to refer for
25 employment any individual, in any way that would

1 deprive or tend to deprive any individual of employ-
2 ment opportunities, or otherwise adversely affect the
3 status of the individual as an employee, because of
4 genetic information with respect to the individual; or
5 (3) to cause or attempt to cause an employer to
6 discriminate against an applicant for or a partici-
7 pant in such apprenticeship or other training or re-
8 training in violation of this title.

9 (b) ACQUISITION OF GENETIC INFORMATION.—It
10 shall be an unlawful employment practice for an employer,
11 labor organization, or joint labor-management committee
12 described in subsection (a) to request, require, or purchase
13 genetic information with respect to an individual or a fam-
14 ily member of the individual except—

15 (1) where the employer, labor organization, or
16 joint labor-management committee inadvertently re-
17 quests or requires family medical history of the indi-
18 vidual or family member of the individual;

19 (2) where—

20 (A) health or genetic services are offered
21 by the employer, labor organization, or joint
22 labor-management committee, including such
23 services offered as part of a bona fide wellness
24 program;

1 (B) the individual provides prior, knowing,
2 voluntary, and written authorization;

3 (C) only the individual (or family member
4 if the family member is receiving genetic serv-
5 ices) and the licensed health care professional
6 or board certified genetic counselor involved in
7 providing such services receive individually iden-
8 tifiable information concerning the results of
9 such services; and

10 (D) any individually identifiable genetic in-
11 formation provided under subparagraph (C) in
12 connection with the services provided under
13 subparagraph (A) is only available for purposes
14 of such services and shall not be disclosed to
15 the employer, labor organization, or joint labor-
16 management committee except in aggregate
17 terms that do not disclose the identity of spe-
18 cific individuals;

19 (3) where the employer, labor organization, or
20 joint labor-management committee requests or re-
21 quires family medical history from the individual to
22 comply with the certification provisions of section
23 103 of the Family and Medical Leave Act of 1993
24 (29 U.S.C. 2613) or such requirements under State
25 family and medical leave laws;

1 (4) where the employer, labor organization, or
2 joint labor-management committee purchases docu-
3 ments that are commercially and publicly available
4 (including newspapers, magazines, periodicals, and
5 books, but not including medical databases or court
6 records) that include family medical history;

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

10 (A) the employer, labor organization, or
11 joint labor-management committee provides
12 written notice of the genetic monitoring to the
13 individual;

14 (B)(i) the individual provides prior, know-
15 ing, voluntary, and written authorization; or

16 (ii) the genetic monitoring is required by
17 Federal or State law;

18 (C) the individual is informed of individual
19 monitoring results;

20 (D) the monitoring is in compliance with—

21 (i) any Federal genetic monitoring
22 regulations, including any such regulations
23 that may be promulgated by the Secretary
24 of Labor pursuant to the Occupational
25 Safety and Health Act of 1970 (29 U.S.C.

651 et seq.), the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.), or the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.); or

(ii) State genetic monitoring regulations, in the case of a State that is implementing genetic monitoring regulations under the authority of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.); and

(E) the employer, labor organization, or joint labor-management committee, excluding any licensed health care professional or board certified genetic counselor 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 individuals; or

(6) where the employer conducts DNA analysis for law enforcement purposes as a forensic laboratory, includes such analysis in the Combined DNA Index System pursuant to section 210304 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14132), and requests or requires genetic information of such employer's apprentices

1 or trainees, but only to the extent that such genetic
2 information is used for analysis of DNA identifica-
3 tion markers for quality control to detect sample
4 contamination.

5 (c) PRESERVATION OF PROTECTIONS.—In the case
6 of information to which any of paragraphs (1) through
7 (6) of subsection (b) applies, such information may not
8 be used in violation of paragraph (1), (2), or (3) of sub-
9 section (a) or treated or disclosed in a manner that vio-
10 lates section 206.

11 **SEC. 206. CONFIDENTIALITY OF GENETIC INFORMATION.**

12 (a) TREATMENT OF INFORMATION AS PART OF CON-
13 FIDENTIAL MEDICAL RECORD.—If an employer, employ-
14 ment agency, labor organization, or joint labor-manage-
15 ment committee possesses genetic information about an
16 employee or member, such information shall be main-
17 tained on separate forms and in separate medical files and
18 be treated as a confidential medical record of the employee
19 or member. An employer, employment agency, labor orga-
20 nization, or joint labor-management committee shall be
21 considered to be in compliance with the maintenance of
22 information requirements of this subsection with respect
23 to genetic information subject to this subsection that is
24 maintained with and treated as a confidential medical

1 record under section 102(d)(3)(B) of the Americans With
2 Disabilities Act (42 U.S.C. 12112(d)(3)(B)).

3 (b) LIMITATION ON DISCLOSURE.—An employer, em-
4 ployment agency, labor organization, or joint labor-man-
5 agement committee shall not disclose genetic information
6 concerning an employee or member except—

7 (1) to the employee or member of a labor orga-
8 nization (or family member if the family member is
9 receiving the genetic services) at the written request
10 of the employee or member of such organization;

11 (2) to an occupational or other health re-
12 searcher if the research is conducted in compliance
13 with the regulations and protections provided for
14 under part 46 of title 45, Code of Federal Regula-
15 tions;

16 (3) in response to an order of a court, except
17 that—

18 (A) the employer, employment agency,
19 labor organization, or joint labor-management
20 committee may disclose only the genetic infor-
21 mation expressly authorized by such order; and

22 (B) if the court order was secured without
23 the knowledge of the employee or member to
24 whom the information refers, the employer, em-
25 ployment agency, labor organization, or joint

1 labor-management committee shall inform the
2 employee or member of the court order and any
3 genetic information that was disclosed pursuant
4 to such order;

5 (4) to government officials who are inves-
6 tigating compliance with this title if the information
7 is relevant to the investigation; or

8 (5) to the extent that such disclosure is made
9 in connection with the employee's compliance with
10 the certification provisions of section 103 of the
11 Family and Medical Leave Act of 1993 (29 U.S.C.
12 2613) or such requirements under State family and
13 medical leave laws.

14 (c) RELATIONSHIP TO HIPAA REGULATIONS.—With
15 respect to the regulations promulgated by the Secretary
16 of Health and Human Services under part C of title XI
17 of the Social Security Act (42 U.S.C. 1320d et seq.) and
18 section 264 of the Health Insurance Portability and Ac-
19 countability Act of 1996 (42 U.S.C. 1320d-2 note), this
20 title does not prohibit a covered entity under such regula-
21 tions from any use or disclosure of health information that
22 is authorized for the covered entity under such regula-
23 tions. The previous sentence does not affect the authority
24 of such Secretary to modify such regulations.

1 **SEC. 207. REMEDIES AND ENFORCEMENT.**

2 (a) EMPLOYEES COVERED BY TITLE VII OF THE
3 CIVIL RIGHTS ACT OF 1964.—

4 (1) IN GENERAL.—The powers, remedies, and
5 procedures provided in sections 705, 706, 707, 709,
6 710, and 711 of the Civil Rights Act of 1964 (42
7 U.S.C. 2000e–4 et seq.) to the Commission, the At-
8 torney General, or any person, alleging a violation of
9 title VII of that Act (42 U.S.C. 2000e et seq.) shall
10 be the powers, remedies, and procedures this title
11 provides to the Commission, the Attorney General,
12 or any person, respectively, alleging an unlawful em-
13 ployment practice in violation of this title against an
14 employee described in section 201(2)(A)(i), except as
15 provided in paragraphs (2) and (3).

16 (2) COSTS AND FEES.—The powers, remedies,
17 and procedures provided in subsections (b) and (c)
18 of section 722 of the Revised Statutes of the United
19 States (42 U.S.C. 1988), shall be powers, remedies,
20 and procedures this title provides to the Commis-
21 sion, the Attorney General, or any person, alleging
22 such a practice.

23 (3) DAMAGES.—The powers, remedies, and pro-
24 cedures provided in section 1977A of the Revised
25 Statutes of the United States (42 U.S.C. 1981a), in-
26 cluding the limitations contained in subsection (b)(3)

1 of such section 1977A, shall be powers, remedies,
2 and procedures this title provides to the Commis-
3 sion, the Attorney General, or any person, alleging
4 such a practice (not an employment practice specifi-
5 cally excluded from coverage under section
6 1977A(a)(1) of the Revised Statutes of the United
7 States).

8 (b) EMPLOYEES COVERED BY GOVERNMENT EM-
9 PLOYEE RIGHTS ACT OF 1991.—

10 (1) IN GENERAL.—The powers, remedies, and
11 procedures provided in sections 302 and 304 of the
12 Government Employee Rights Act of 1991 (42
13 U.S.C. 2000e–16b, 2000e–16c) to the Commission,
14 or any person, alleging a violation of section
15 302(a)(1) of that Act (42 U.S.C. 2000e–16b(a)(1))
16 shall be the powers, remedies, and procedures this
17 title provides to the Commission, or any person, re-
18 spectively, alleging an unlawful employment practice
19 in violation of this title against an employee de-
20 scribed in section 201(2)(A)(ii), except as provided
21 in paragraphs (2) and (3).

22 (2) COSTS AND FEES.—The powers, remedies,
23 and procedures provided in subsections (b) and (c)
24 of section 722 of the Revised Statutes of the United
25 States (42 U.S.C. 1988), shall be powers, remedies,

1 and procedures this title provides to the Commis-
2 sion, or any person, alleging such a practice.

3 (3) DAMAGES.—The powers, remedies, and pro-
4 cedures provided in section 1977A of the Revised
5 Statutes of the United States (42 U.S.C. 1981a), in-
6 cluding the limitations contained in subsection (b)(3)
7 of such section 1977A, shall be powers, remedies,
8 and procedures this title provides to the Commis-
9 sion, or any person, alleging such a practice (not an
10 employment practice specifically excluded from cov-
11 erage under section 1977A(a)(1) of the Revised
12 Statutes of the United States).

13 (c) EMPLOYEES COVERED BY CONGRESSIONAL AC-
14 COUNTABILITY ACT OF 1995.—

15 (1) IN GENERAL.—The powers, remedies, and
16 procedures provided in the Congressional Account-
17 ability Act of 1995 (2 U.S.C. 1301 et seq.) to the
18 Board (as defined in section 101 of that Act (2
19 U.S.C. 1301)), or any person, alleging a violation of
20 section 201(a)(1) of that Act (42 U.S.C. 1311(a)(1))
21 shall be the powers, remedies, and procedures this
22 title provides to that Board, or any person, alleging
23 an unlawful employment practice in violation of this
24 title against an employee described in section

1 201(2)(A)(iii), except as provided in paragraphs (2)
2 and (3).

3 (2) COSTS AND FEES.—The powers, remedies,
4 and procedures provided in subsections (b) and (c)
5 of section 722 of the Revised Statutes of the United
6 States (42 U.S.C. 1988), shall be powers, remedies,
7 and procedures this title provides to that Board, or
8 any person, alleging such a practice.

9 (3) DAMAGES.—The powers, remedies, and pro-
10 cedures provided in section 1977A of the Revised
11 Statutes of the United States (42 U.S.C. 1981a), in-
12 cluding the limitations contained in subsection (b)(3)
13 of such section 1977A, shall be powers, remedies,
14 and procedures this title provides to that Board, or
15 any person, alleging such a practice (not an employ-
16 ment practice specifically excluded from coverage
17 under section 1977A(a)(1) of the Revised Statutes
18 of the United States).

19 (4) OTHER APPLICABLE PROVISIONS.—With re-
20 spect to a claim alleging a practice described in
21 paragraph (1), title III of the Congressional Ac-
22 countability Act of 1995 (2 U.S.C. 1381 et seq.)
23 shall apply in the same manner as such title applies
24 with respect to a claim alleging a violation of section
25 201(a)(1) of such Act (2 U.S.C. 1311(a)(1)).

1 (d) EMPLOYEES COVERED BY CHAPTER 5 OF TITLE
2 3, UNITED STATES CODE.—

3 (1) IN GENERAL.—The powers, remedies, and
4 procedures provided in chapter 5 of title 3, United
5 States Code, to the President, the Commission, the
6 Merit Systems Protection Board, or any person, al-
7 leging a violation of section 411(a)(1) of that title,
8 shall be the powers, remedies, and procedures this
9 title provides to the President, the Commission, such
10 Board, or any person, respectively, alleging an un-
11 lawful employment practice in violation of this title
12 against an employee described in section
13 201(2)(A)(iv), except as provided in paragraphs (2)
14 and (3).

15 (2) COSTS AND FEES.—The powers, remedies,
16 and procedures provided in subsections (b) and (c)
17 of section 722 of the Revised Statutes of the United
18 States (42 U.S.C. 1988), shall be powers, remedies,
19 and procedures this title provides to the President,
20 the Commission, such Board, or any person, alleging
21 such a practice.

22 (3) DAMAGES.—The powers, remedies, and pro-
23 cedures provided in section 1977A of the Revised
24 Statutes of the United States (42 U.S.C. 1981a), in-
25 cluding the limitations contained in subsection (b)(3)

1 of such section 1977A, shall be powers, remedies,
2 and procedures this title provides to the President,
3 the Commission, such Board, or any person, alleging
4 such a practice (not an employment practice specifi-
5 cally excluded from coverage under section
6 1977A(a)(1) of the Revised Statutes of the United
7 States).

8 (e) EMPLOYEES COVERED BY SECTION 717 OF THE
9 CIVIL RIGHTS ACT OF 1964.—

10 (1) IN GENERAL.—The powers, remedies, and
11 procedures provided in section 717 of the Civil
12 Rights Act of 1964 (42 U.S.C. 2000e–16) to the
13 Commission, the Attorney General, the Librarian of
14 Congress, or any person, alleging a violation of that
15 section shall be the powers, remedies, and proce-
16 dures this title provides to the Commission, the At-
17 torney General, the Librarian of Congress, or any
18 person, respectively, alleging an unlawful employ-
19 ment practice in violation of this title against an em-
20 ployee or applicant described in section
21 201(2)(A)(v), except as provided in paragraphs (2)
22 and (3).

23 (2) COSTS AND FEES.—The powers, remedies,
24 and procedures provided in subsections (b) and (c)
25 of section 722 of the Revised Statutes of the United

1 States (42 U.S.C. 1988), shall be powers, remedies,
2 and procedures this title provides to the Commis-
3 sion, the Attorney General, the Librarian of Con-
4 gress, or any person, alleging such a practice.

5 (3) DAMAGES.—The powers, remedies, and pro-
6 cedures provided in section 1977A of the Revised
7 Statutes of the United States (42 U.S.C. 1981a), in-
8 cluding the limitations contained in subsection (b)(3)
9 of such section 1977A, shall be powers, remedies,
10 and procedures this title provides to the Commis-
11 sion, the Attorney General, the Librarian of Con-
12 gress, or any person, alleging such a practice (not an
13 employment practice specifically excluded from cov-
14 erage under section 1977A(a)(1) of the Revised
15 Statutes of the United States).

16 (f) DEFINITION.—In this section, the term “Commis-
17 sion” means the Equal Employment Opportunity Commis-
18 sion.

19 **SEC. 208. DISPARATE IMPACT.**

20 (a) GENERAL RULE.—Notwithstanding any other
21 provision of this Act, “disparate impact”, as that term is
22 used in section 703(k) of the Civil Rights Act of 1964
23 (42 U.S.C. 2000e–2(k)), on the basis of genetic informa-
24 tion does not establish a cause of action under this Act.

1 (b) COMMISSION.—On the date that is 6 years after
2 the date of enactment of this Act, there shall be estab-
3 lished a commission, to be known as the Genetic Non-
4 discrimination Study Commission (referred to in this sec-
5 tion as the “Commission”) to review the developing
6 science of genetics and to make recommendations to Con-
7 gress regarding whether to provide a disparate impact
8 cause of action under this Act.

9 (c) MEMBERSHIP.—

10 (1) IN GENERAL.—The Commission shall be
11 composed of 8 members, of which—

12 (A) 1 member shall be appointed by the
13 Majority Leader of the Senate;

14 (B) 1 member shall be appointed by the
15 Minority Leader of the Senate;

16 (C) 1 member shall be appointed by the
17 Chairman of the Committee on Health, Edu-
18 cation, Labor, and Pensions of the Senate;

19 (D) 1 member shall be appointed by the
20 ranking minority member of the Committee on
21 Health, Education, Labor, and Pensions of the
22 Senate;

23 (E) 1 member shall be appointed by the
24 Speaker of the House of Representatives;

1 (F) 1 member shall be appointed by the
2 Minority Leader of the House of Representa-
3 tives;

4 (G) 1 member shall be appointed by the
5 Chairman of the Committee on Education and
6 Labor of the House of Representatives; and

7 (H) 1 member shall be appointed by the
8 ranking minority member of the Committee on
9 Education and Labor of the House of Rep-
10 resentatives.

11 (2) COMPENSATION AND EXPENSES.—The
12 members of the Commission shall not receive com-
13 pensation for the performance of services for the
14 Commission, but shall be allowed travel expenses, in-
15 cluding per diem in lieu of subsistence, at rates au-
16 thorized for employees of agencies under subchapter
17 I of chapter 57 of title 5, United States Code, while
18 away from their homes or regular places of business
19 in the performance of services for the Commission.

20 (d) ADMINISTRATIVE PROVISIONS.—

21 (1) LOCATION.—The Commission shall be lo-
22 cated in a facility maintained by the Equal Employ-
23 ment Opportunity Commission.

24 (2) DETAIL OF GOVERNMENT EMPLOYEES.—
25 Any Federal Government employee may be detailed

1 to the Commission without reimbursement, and such
2 detail shall be without interruption or loss of civil
3 service status or privilege.

4 (3) INFORMATION FROM FEDERAL AGENCIES.—

5 The Commission may secure directly from any Fed-
6 eral department or agency such information as the
7 Commission considers necessary to carry out the
8 provisions of this section. Upon request of the Com-
9 mission, the head of such department or agency
10 shall furnish such information to the Commission.

11 (4) HEARINGS.—The Commission may hold
12 such hearings, sit and act at such times and places,
13 take such testimony, and receive such evidence as
14 the Commission considers advisable to carry out the
15 objectives of this section, except that, to the extent
16 possible, the Commission shall use existing data and
17 research.

18 (5) POSTAL SERVICES.—The Commission may
19 use the United States mails in the same manner and
20 under the same conditions as other departments and
21 agencies of the Federal Government.

22 (e) REPORT.—Not later than 1 year after all of the
23 members are appointed to the Commission under sub-
24 section (c)(1), the Commission shall submit to Congress
25 a report that summarizes the findings of the Commission

1 and makes such recommendations for legislation as are
2 consistent with this Act.

3 (f) AUTHORIZATION OF APPROPRIATIONS.—There
4 are authorized to be appropriated to the Equal Employ-
5 ment Opportunity Commission such sums as may be nec-
6 essary to carry out this section.

7 **SEC. 209. CONSTRUCTION.**

8 (a) IN GENERAL.—Nothing in this title shall be con-
9 strued to—

10 (1) limit the rights or protections of an indi-
11 vidual under any other Federal or State statute that
12 provides equal or greater protection to an individual
13 than the rights or protections provided for under
14 this title, including the protections of an individual
15 under the Americans with Disabilities Act of 1990
16 (42 U.S.C. 12101 et seq.) (including coverage af-
17 farded to individuals under section 102 of such Act
18 (42 U.S.C. 12112)), or under the Rehabilitation Act
19 of 1973 (29 U.S.C. 701 et seq.);

20 (2)(A) limit the rights or protections of an indi-
21 vidual to bring an action under this title against an
22 employer, employment agency, labor organization, or
23 joint labor-management committee for a violation of
24 this title; or

1 (B) provide for enforcement of, or penalties for
2 violation of, any requirement or prohibition applica-
3 ble to any employer, employment agency, labor orga-
4 nization, or joint labor-management committee the
5 enforcement of which, or penalties for which, are
6 provided under the amendments made by title I;

7 (3) apply to the Armed Forces Repository of
8 Specimen Samples for the Identification of Remains;

9 (4) limit or expand the protections, rights, or
10 obligations of employees or employers under applica-
11 ble workers' compensation laws;

12 (5) limit the authority of a Federal department
13 or agency to conduct or sponsor occupational or
14 other health research that is conducted in compli-
15 ance with the regulations contained in part 46 of
16 title 45, Code of Federal Regulations (or any cor-
17 responding or similar regulation or rule);

18 (6) limit the statutory or regulatory authority
19 of the Occupational Safety and Health Administra-
20 tion or the Mine Safety and Health Administration
21 to promulgate or enforce workplace safety and
22 health laws and regulations; or

23 (7) require any specific benefit for an employee
24 or member or a family member of an employee or
25 member under any group health plan or health in-

1 surance issuer offering group health insurance cov-
2 erage in connection with a group health plan.

3 (b) GENETIC INFORMATION OF A FETUS OR EM-
4 BRYO.—Any reference in this title to genetic information
5 concerning an individual or family member of an indi-
6 vidual shall—

7 (1) with respect to such an individual or family
8 member of an individual who is a pregnant woman,
9 include genetic information of any fetus carried by
10 such pregnant woman; and

11 (2) with respect to an individual or family
12 member utilizing an assisted reproductive tech-
13 nology, include genetic information of any embryo le-
14 gally held by the individual or family member.

15 **SEC. 210. MEDICAL INFORMATION THAT IS NOT GENETIC**
16 **INFORMATION.**

17 An employer, employment agency, labor organization,
18 or joint labor-management committee shall not be consid-
19 ered to be in violation of this title based on the use, acqui-
20 sition, or disclosure of medical information that is not ge-
21 netic information about a manifested disease, disorder, or
22 pathological condition of an employee or member, includ-
23 ing a manifested disease, disorder, or pathological condi-
24 tion that has or may have a genetic basis.

1 **SEC. 211. REGULATIONS.**

2 Not later than 1 year after the date of enactment
3 of this title, the Commission shall issue final regulations
4 to carry out this title.

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

6 There are authorized to be appropriated such sums
7 as may be necessary to carry out this title (except for sec-
8 tion 208).

9 **SEC. 213. EFFECTIVE DATE.**

10 This title takes effect on the date that is 18 months
11 after the date of enactment of this Act.

12 **TITLE III—MISCELLANEOUS**
13 **PROVISIONS**

14 **SEC. 301. GUARANTEE AGENCY COLLECTION RETENTION.**

15 Clause (ii) of section 428(c)(6)(A) of the Higher
16 Education Act of 1965 (20 U.S.C. 1078(c)(6)(A)) is
17 amended to read as follows:

18 “(ii) an amount equal to 23 percent of
19 such payments for use in accordance with sec-
20 tion 422B, except that beginning October 1,
21 2007, and ending September 30, 2008, this
22 subparagraph shall be applied by substituting
23 ‘22 percent’ for ‘23 percent’.”.

24 **SEC. 302. SEVERABILITY.**

25 If any provision of this Act, an amendment made by
26 this Act, or the application of such provision or amend-

1 ment to any person or circumstance is held to be unconsti-
2 tutional, the remainder of this Act, the amendments made
3 by this Act, and the application of such provisions to any
4 person or circumstance shall not be affected thereby.

Passed the House of Representatives April 25, 2007.

Attest: LORRAINE C. MILLER,
Clerk.

Calendar No. 125

110TH CONGRESS
1ST Session

H. R. 493

AN ACT

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

APRIL 30, 2007

Read the second time and placed on the calendar