

# Union Calendar No. 46

110TH CONGRESS  
1ST SESSION

# H. R. 493

**[Report No. 110–28, Parts I, II, and III]**

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

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IN THE HOUSE OF REPRESENTATIVES

JANUARY 16, 2007

Ms. SLAUGHTER (for herself, Mrs. BIGGERT, Ms. ESHOO, Mr. WALDEN of Oregon, Mr. GEORGE MILLER of California, Mr. DINGELL, Mr. RANGEL, Mr. ACKERMAN, Mr. ALEXANDER, Mr. ALLEN, Mr. BACHUS, Mr. BAKER, Ms. BALDWIN, Mr. BARTLETT of Maryland, Mr. BILIRAKIS, Mrs. BLACKBURN, Mr. BLUMENAUER, Mrs. BONO, Mr. BOUSTANY, Mr. BROWN of South Carolina, Ms. GINNY BROWN-WAITE of Florida, Mr. BURTON of Indiana, Mr. CALVERT, Mrs. CAPITO, Mrs. CAPPS, Mr. CAPUANO, Mr. CASTLE, Mr. CHABOT, Mr. CHANDLER, Mr. COLE of Oklahoma, Mr. CONAWAY, Mr. CONYERS, Mrs. DAVIS of California, Mr. TOM DAVIS of Virginia, Mr. DAVIS of Kentucky, Ms. DEGETTE, Mr. DICKS, Mr. DOGGETT, Mrs. DRAKE, Mr. DUNCAN, Mr. EHLERS, Mr. EMANUEL, Mrs. EMERSON, Mr. ENGEL, Mr. ENGLISH of Pennsylvania, Mr. FARR, Mr. FERGUSON, Mr. FRELINGHUYSEN, Mr. GALLEGLY, Mr. GERLACH, Mr. GILCHREST, Mr. GILLMOR, Mr. GOHMERT, Ms. GRANGER, Mr. GENE GREEN of Texas, Mr. GRIJALVA, Mr. HALL of Texas, Mr. HASTINGS of Washington, Mr. HERGER, Ms. HERSETH, Mr. HINOJOSA, Ms. HIRONO, Mr. HOBSON, Mr. HOEKSTRA, Ms. HOOLEY, Mr. HUNTER, Mr. ISRAEL, Mr. JOHNSON of Illinois, Mr. JONES of North Carolina, Mr. KANJORSKI, Mr. KENNEDY, Mr. KILDEE, Mr. KING of New York, Mr. KIRK, Mr. KUCINICH, Mr. KUHL of New York, Mr. LAHOOD, Mr. LATHAM, Mr. LEWIS of Kentucky, Mr. LIPINSKI, Mr. LOBIONDO, Ms. ZOE LOFGREN of California, Mr. LUCAS, Mrs. MALONEY of New York, Mr. MANZULLO, Mr. MARCHANT, Mr. MCCAUL of Texas, Ms. MCCOLLUM of Minnesota, Mr. MCCOTTER, Mr. MCHUGH, Mr. McNULTY, Mr. MICA, Mr. MORAN of Virginia, Mrs. MYRICK, Mr. NEUGEBAUER, Mr. NORWOOD, Mr. OLVER, Mr. PEARCE, Mr. PITTS, Mr. PLATTS, Mr. PORTER, Mr. PRICE of North Carolina, Ms. PRYCE of Ohio, Mr. PUTNAM, Mr. RAMSTAD, Mr. REGULA, Mr. REICHERT, Mr. REYNOLDS, Mr. ROSKAM,

Ms. ROS-LEHTINEN, Mr. RYAN of Wisconsin, Mr. SAXTON, Ms. SCHAKOWSKY, Mr. SCHIFF, Mr. SESSIONS, Mr. SHAYS, Mr. SIMPSON, Ms. SOLIS, Mr. SOUDER, Mr. STARK, Mr. THOMPSON of California, Mr. TIBERI, Mr. TIERNEY, Mr. UDALL of New Mexico, Mr. UPTON, Mr. VAN HOLLEN, Mr. WALSH of New York, Mr. WAMP, Ms. WATSON, Mr. WAXMAN, Mr. WELLER of Illinois, Mr. WEXLER, Mr. WHITFIELD, Mr. WICKER, Mr. WILSON of South Carolina, Mr. WOLF, Ms. WOOLSEY, Mr. YARMUTH, Mr. YOUNG of Florida, Mr. CROWLEY, Mr. HOLT, Mr. JINDAL, Mr. LATOURETTE, and Mr. TANCREDO) introduced the following bill; which was referred to the Committee on Education and Labor, and in addition to the Committees on Energy and Commerce and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

MARCH 5, 2007

Reported from the Committee on Education and Labor with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

MARCH 5, 2007

Referral to the Committees on Energy and Commerce and Ways and Means extended for a period ending not later than March 23, 2007

MARCH 23, 2007

Referral to the Committees on Energy and Commerce and Ways and Means extended for a period ending not later than March 26, 2007

MARCH 26, 2007

Reported from the Committee on Ways and Means with an amendment

[Strike out all after the enacting clause and insert the part printed in **boldface roman**]

MARCH 26, 2007

Referral to the Committee on Energy and Commerce extended for a period ending not later than March 29, 2007

MARCH 29, 2007

Additional sponsors: Mr. HOYER, Ms. CASTOR, Mrs. JO ANN DAVIS of Virginia, Mr. ROTHMAN, Mr. FEENEY, Mr. POE, Mr. MEEHAN, Mr. DEFAZIO, Mr. WEINER, Mr. OBERSTAR, Mr. PALLONE, Mr. MCGOVERN, Mr. MILLER of North Carolina, Ms. NORTON, Mr. PASCRELL, Ms. SCHWARTZ, Mr. FRANK of Massachusetts, Mr. LARSON of Connecticut, Ms. HARMAN, Mr. LEWIS of Georgia, Mr. TOWNS, Mr. HINCHEY, Mr. WU, Mr. LANGEVIN, Mrs. MCCARTHY of New York, Mr. BERRY, Mr. CLAY, Mr. HIGGINS, Mrs. LOWEY, Mr. HARE, Mr. SPRATT, Mr. McDERMOTT, Ms. LINDA T. SÁNCHEZ of California, Ms. DELAURO, Mr. MOORE of Kansas, Mr. PAYNE, Mr. BERMAN, Mr. LEVIN, Mr. COURTNEY, Mr. MURTHA, Mr. CLEAVER, Mr. GORDON of Tennessee, Mr. BOUCHER, Mr. SESTAK, Mr. KIND, Mr. COSTELLO, Ms. SHEA-PORTER, Mr. ABERCROMBIE, Mr. CUMMINGS, Mr. SHERMAN, Mr. DOYLE, Mr. BISHOP of New York, Mr. SCOTT of Virginia, Mr. MARKEY, Mr. LOEBSACK, Mrs. MUSGRAVE, Ms. BERKLEY, Ms. SUTTON, Mr. STUPAK,

Mr. COHEN, Mr. MELANCON, Mr. OBEY, Mrs. TAUSCHER, Mr. PICKERING, Mr. MATHESON, Mr. WYNN, Mr. CRAMER, Mr. ETHERIDGE, Mr. ROSS, Ms. BEAN, Mr. RUSH, Mr. DAVIS of Illinois, Mr. ALTMIRE, Mr. GONZALEZ, Mr. COOPER, Mr. BUTTERFIELD, Mr. INSLEE, Mr. UDALL of Colorado, Mr. DAVIS of Alabama, Mr. HILL, and Mr. FATTAH

MARCH 29, 2007

Reported from the Committee on Energy and Commerce with an amendment; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in boldface italic]

[For text of introduced bill, see copy of bill as introduced on January 16, 2007]

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## A BILL

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

1       *Be it enacted by the Senate and House of Representa-*  
 2 *tives of the United States of America in Congress assembled,*  
 3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4       (a) *SHORT TITLE.*—*This Act may be cited as the “Ge-*  
 5 *netic Information Nondiscrimination Act of 2007”.*

6       (b) *TABLE OF CONTENTS.*—*The table of contents of this*  
 7 *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 title XVIII of the Social Security Act relating to medigap.*

*Sec. 104. Privacy and confidentiality.*

*Sec. 105. Assuring coordination.*

*Sec. 106. Regulations; effective date.*

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 PROVISION

- Sec. 301. Severability.*

1 **SEC. 2. FINDINGS.**

2 *Congress makes the following findings:*

3 *(1) Deciphering the sequence of the human ge-*  
4 *nome and other advances in genetics open major new*  
5 *opportunities for medical progress. New knowledge*  
6 *about the genetic basis of illness will allow for earlier*  
7 *detection of illnesses, often before symptoms have*  
8 *begun. Genetic testing can allow individuals to take*  
9 *steps to reduce the likelihood that they will contract*  
10 *a particular disorder. New knowledge about genetics*  
11 *may allow for the development of better therapies that*  
12 *are more effective against disease or have fewer side*  
13 *effects than current treatments. These advances give*  
14 *rise to the potential misuse of genetic information to*  
15 *discriminate in health insurance and employment.*

1           (2) *The early science of genetics became the basis*  
2 *of State laws that provided for the sterilization of*  
3 *persons having presumed genetic “defects” such as*  
4 *mental retardation, mental disease, epilepsy, blind-*  
5 *ness, and hearing loss, among other conditions. The*  
6 *first sterilization law was enacted in the State of In-*  
7 *diana in 1907. By 1981, a majority of States adopted*  
8 *sterilization laws to “correct” apparent genetic traits*  
9 *or tendencies. Many of these State laws have since*  
10 *been repealed, and many have been modified to in-*  
11 *clude essential constitutional requirements of due*  
12 *process and equal protection. However, the current ex-*  
13 *pllosion in the science of genetics, and the history of*  
14 *sterilization laws by the States based on early genetic*  
15 *science, compels Congressional action in this area.*

16           (3) *Although genes are facially neutral markers,*  
17 *many genetic conditions and disorders are associated*  
18 *with particular racial and ethnic groups and gender.*  
19 *Because some genetic traits are most prevalent in*  
20 *particular groups, members of a particular group*  
21 *may be stigmatized or discriminated against as a re-*  
22 *sult of that genetic information. This form of dis-*  
23 *crimination was evident in the 1970s, which saw the*  
24 *advent of programs to screen and identify carriers of*  
25 *sickle cell anemia, a disease which afflicts African-*

1     *Americans. Once again, State legislatures began to*  
2     *enact discriminatory laws in the area, and in the*  
3     *early 1970s began mandating genetic screening of all*  
4     *African Americans for sickle cell anemia, leading to*  
5     *discrimination and unnecessary fear. To alleviate*  
6     *some of this stigma, Congress in 1972 passed the Na-*  
7     *tional Sickle Cell Anemia Control Act, which with-*  
8     *holds Federal funding from States unless sickle cell*  
9     *testing is voluntary.*

10           (4) *Congress has been informed of examples of*  
11     *genetic discrimination in the workplace. These in-*  
12     *clude the use of pre-employment genetic screening at*  
13     *Lawrence Berkeley Laboratory, which led to a court*  
14     *decision in favor of the employees in that case Nor-*  
15     *man-Bloodsaw v. Lawrence Berkeley Laboratory (135*  
16     *F.3d 1260, 1269 (9th Cir. 1998)). Congress clearly*  
17     *has a compelling public interest in relieving the fear*  
18     *of discrimination and in prohibiting its actual prac-*  
19     *tice in employment and health insurance.*

20           (5) *Federal law addressing genetic discrimina-*  
21     *tion in health insurance and employment is incom-*  
22     *plete in both the scope and depth of its protections.*  
23     *Moreover, while many States have enacted some type*  
24     *of genetic non-discrimination law, these laws vary*  
25     *widely with respect to their approach, application,*

1        *and level of protection. Congress has collected substan-*  
 2        *tial evidence that the American public and the med-*  
 3        *ical community find the existing patchwork of State*  
 4        *and Federal laws to be confusing and inadequate to*  
 5        *protect them from discrimination. Therefore Federal*  
 6        *legislation establishing a national and uniform basic*  
 7        *standard is necessary to fully protect the public from*  
 8        *discrimination and allay their concerns about the po-*  
 9        *tential for discrimination, thereby allowing individ-*  
 10       *uals to take advantage of genetic testing, technologies,*  
 11       *research, and new therapies.*

12       **TITLE            I—GENETIC            NON-**  
 13       **DISCRIMINATION IN HEALTH**  
 14       **INSURANCE**

15       **SEC. 101. AMENDMENTS TO EMPLOYEE RETIREMENT IN-**  
 16       **COME SECURITY ACT OF 1974.**

17       *(a) PROHIBITION OF HEALTH DISCRIMINATION ON*  
 18       *THE BASIS OF GENETIC INFORMATION OR GENETIC SERV-*  
 19       *ICES.—*

20                *(1) NO ENROLLMENT RESTRICTION FOR GENETIC*  
 21       *SERVICES.—Section 702(a)(1)(F) of the Employee Re-*  
 22       *irement Income Security Act of 1974 (29 U.S.C.*  
 23       *1182(a)(1)(F)) is amended by inserting before the pe-*  
 24       *riod the following: “(including information about a*

1       *request for or receipt of genetic services by an indi-*  
2       *vidual or family member of such individual)*”.

3               (2) *NO DISCRIMINATION IN GROUP PREMIUMS*  
4       *BASED ON GENETIC INFORMATION.—Section 702(b) of*  
5       *the Employee Retirement Income Security Act of*  
6       *1974 (29 U.S.C. 1182(b)) is amended—*

7               (A) *in paragraph (2)(A), by inserting before*  
8       *the semicolon the following: “except as provided*  
9       *in paragraph (3)”*; and

10              (B) *by adding at the end the following:*

11              “(3) *NO DISCRIMINATION IN GROUP PREMIUMS*  
12       *BASED ON GENETIC INFORMATION.—For purposes of*  
13       *this section, a group health plan, or a health insur-*  
14       *ance issuer offering group health insurance coverage*  
15       *in connection with a group health plan, shall not ad-*  
16       *just premium or contribution amounts for a group on*  
17       *the basis of genetic information concerning an indi-*  
18       *vidual in the group or a family member of the indi-*  
19       *vidual (including information about a request for or*  
20       *receipt of genetic services by an individual or family*  
21       *member of such individual).”*.

22              (b) *LIMITATIONS ON GENETIC TESTING.—Section 702*  
23       *of the Employee Retirement Income Security Act of 1974*  
24       *(29 U.S.C. 1182) is amended by adding at the end the fol-*  
25       *lowing:*

1       “(c) *GENETIC TESTING.*—

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

8               “(2) *RULE OF CONSTRUCTION.*—*Nothing in this*  
9       *part shall be construed to—*

10              “(A) *limit the authority of a health care*  
11       *professional who is providing health care services*  
12       *with respect to an individual to request that*  
13       *such individual or a family member of such in-*  
14       *dividual undergo a genetic test;*

15              “(B) *limit the authority of a health care*  
16       *professional who is employed by or affiliated*  
17       *with a group health plan or a health insurance*  
18       *issuer and who is providing health care services*  
19       *to an individual as part of a bona fide wellness*  
20       *program to notify such individual of the avail-*  
21       *ability of a genetic test or to provide information*  
22       *to such individual regarding such genetic test; or*

23              “(C) *authorize or permit a health care pro-*  
24       *fessional to require that an individual undergo a*  
25       *genetic test.*

1       “(d) *APPLICATION TO ALL PLANS.*—The provisions of  
2 subsections (a)(1)(F), (b)(3), and (c) shall apply to group  
3 health plans and health insurance issuers without regard  
4 to section 732(a).

5       “(e) *GENETIC INFORMATION OF A FETUS.*—Any ref-  
6 erence in this section to genetic information concerning an  
7 individual or family member of an individual shall, with  
8 respect to such an individual or family member of an indi-  
9 vidual who is a pregnant woman, include genetic informa-  
10 tion of any fetus carried by such pregnant woman.”.

11       “(c) *DEFINITIONS.*—Section 733(d) of the Employee Re-  
12 tirement Income Security Act of 1974 (29 U.S.C. 1191b(d))  
13 is amended by adding at the end the following:

14               “(5) *FAMILY MEMBER.*—The term ‘family mem-  
15 ber’ means with respect to an individual—

16                       “(A) the spouse of the individual;

17                       “(B) a dependent child of the individual;

18                       and

19                       “(C) any other individual who is a first-de-  
20 gree, second-degree, third-degree, or fourth-degree  
21 relative of an individual described in subpara-  
22 graph (A) or (B).

23       “(6) *GENETIC INFORMATION.*—

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

4                     “(i) *an individual’s genetic tests;*

5                     “(ii) *the genetic tests of family mem-*  
6                     *bers of the individual; or*

7                     “(iii) *the occurrence of a disease or*  
8                     *disorder in family members of the indi-*  
9                     *vidual.*

10           “(B) *EXCLUSIONS.*—*The term ‘genetic in-*  
11           *formation’ shall not include information about*  
12           *the sex or age of an individual.*

13           “(7) *GENETIC TEST.*—

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

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

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

23                     “(ii) *an analysis of proteins or me-*  
24                     *tabolites that is directly related to a mani-*  
25                     *fested disease, disorder, or pathological con-*

1            *dition that could reasonably be detected by*  
2            *a health care professional with appropriate*  
3            *training and expertise in the field of medi-*  
4            *cine involved.*

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

7                    “(A) *a genetic test;*

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

11                   “(C) *genetic education.*”.

12            (d) *ERISA ENFORCEMENT.*—*Section 502 of the Em-*  
13            *ployee Retirement Income Security Act of 1974 (29 U.S.C.*  
14            *1132) is amended—*

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

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

20                    “(9) *SECRETARIAL ENFORCEMENT AUTHORITY*  
21                    *RELATING TO USE OF GENETIC INFORMATION.*—

22                    “(A) *GENERAL RULE.*—*The Secretary may*  
23                    *impose a penalty against any plan sponsor of a*  
24                    *group health plan, or any health insurance*  
25                    *issuer offering health insurance coverage in con-*

1            *nection with the plan, for any failure by such*  
2            *sponsor or issuer to meet the requirements of*  
3            *subsection (a)(1)(F), (b)(3), or (c) of section 702*  
4            *or of section 714 in connection with the plan.*

5            *“(B) AMOUNT.—*

6                    *“(i) IN GENERAL.—The amount of the*  
7                    *penalty imposed by subparagraph (A) shall*  
8                    *be \$100 for each day in the noncompliance*  
9                    *period with respect to each participant or*  
10                   *beneficiary to whom such failure relates.*

11                   *“(ii) NONCOMPLIANCE PERIOD.—For*  
12                   *purposes of this paragraph, the term ‘non-*  
13                   *compliance period’ means, with respect to*  
14                   *any failure, the period—*

15                            *“(I) beginning on the date such*  
16                            *failure first occurs; and*

17                            *“(II) ending on the date such fail-*  
18                            *ure is corrected.*

19                   *“(C) MINIMUM PENALTIES WHERE FAILURE*  
20                   *DISCOVERED.—Notwithstanding clauses (i) and*  
21                   *(ii) of subparagraph (D):*

22                            *“(i) IN GENERAL.—In the case of 1 or*  
23                            *more failures with respect to a participant*  
24                            *or beneficiary—*

1                   “(I) which are not corrected before  
2                   the date on which the plan receives a  
3                   notice from the Secretary of such viola-  
4                   tion; and

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

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

19                  “(D) *LIMITATIONS.—*

20                  “(i) *PENALTY NOT TO APPLY WHERE*  
21                  *FAILURE NOT DISCOVERED EXERCISING*  
22                  *REASONABLE DILIGENCE.—No penalty shall*  
23                  *be imposed by subparagraph (A) on any*  
24                  *failure during any period for which it is es-*  
25                  *tablished to the satisfaction of the Secretary*

1           *that the person otherwise liable for such*  
2           *penalty did not know, and exercising rea-*  
3           *sonable diligence would not have known,*  
4           *that such failure existed.*

5           “(ii) *PENALTY NOT TO APPLY TO FAIL-*  
6           *URES CORRECTED WITHIN CERTAIN PERI-*  
7           *ODS.—No penalty shall be imposed by sub-*  
8           *paragraph (A) on any failure if—*

9                   “(I) *such failure was due to rea-*  
10                   *sonable cause and not to willful ne-*  
11                   *glect; and*

12                   “(II) *such failure is corrected dur-*  
13                   *ing the 30-day period beginning on the*  
14                   *first date the person otherwise liable*  
15                   *for such penalty knew, or exercising*  
16                   *reasonable diligence would have known,*  
17                   *that such failure existed.*

18           “(iii) *OVERALL LIMITATION FOR UNIN-*  
19           *TENTIONAL FAILURES.—In the case of fail-*  
20           *ures which are due to reasonable cause and*  
21           *not to willful neglect, the penalty imposed*  
22           *by subparagraph (A) for failures shall not*  
23           *exceed the amount equal to the lesser of—*

24                   “(I) *10 percent of the aggregate*  
25                   *amount paid or incurred by the plan*

1                    *sponsor (or predecessor plan sponsor)*  
2                    *during the preceding taxable year for*  
3                    *group health plans; or*

4                    *“(II) \$500,000.*

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

12                   *“(F) DEFINITIONS.—Terms used in this*  
13                   *paragraph which are defined in section 733 shall*  
14                   *have the meanings provided such terms in such*  
15                   *section.”.*

16                   *(e) REGULATIONS AND EFFECTIVE DATE.—*

17                   *(1) REGULATIONS.—The Secretary of Labor shall*  
18                   *issue final regulations not later than 1 year after the*  
19                   *date of enactment of this Act to carry out the amend-*  
20                   *ments made by this section.*

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

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

2 **ACT.**

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

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

8 (A) *NO ENROLLMENT RESTRICTION FOR GE-*  
9 *NETIC SERVICES.*—*Section 2702(a)(1)(F) of the*  
10 *Public Health Service Act (42 U.S.C. 300gg-*  
11 *1(a)(1)(F)) is amended by inserting before the*  
12 *period the following: “(including information*  
13 *about a request for or receipt of genetic services*  
14 *by an individual or family member of such indi-*  
15 *vidual)”.*

16 (B) *NO DISCRIMINATION IN GROUP PRE-*  
17 *MIUMS BASED ON GENETIC INFORMATION.*—*Sec-*  
18 *tion 2702(b) of the Public Health Service Act (42*  
19 *U.S.C. 300gg-1(b)) is amended—*

20 (i) *in paragraph (2)(A), by inserting*  
21 *before the semicolon the following: “, except*  
22 *as provided in paragraph (3)”;* and

23 (ii) *by adding at the end the following:*

24 “(3) *NO DISCRIMINATION IN GROUP PREMIUMS*  
25 *BASED ON GENETIC INFORMATION.*—*For purposes of*  
26 *this section, a group health plan, or a health insur-*

1        *ance issuer offering group health insurance coverage*  
2        *in connection with a group health plan, shall not ad-*  
3        *just premium or contribution amounts for a group on*  
4        *the basis of genetic information concerning an indi-*  
5        *vidual in the group or a family member of the indi-*  
6        *vidual (including information about a request for or*  
7        *receipt of genetic services by an individual or family*  
8        *member of such individual).”.*

9                (2) *LIMITATIONS ON GENETIC TESTING.—Section*  
10        *2702 of the Public Health Service Act (42 U.S.C.*  
11        *300gg–1) is amended by adding at the end the fol-*  
12        *lowing:*

13        *“(c) GENETIC TESTING.—*

14                *“(1) LIMITATION ON REQUESTING OR REQUIRING*  
15        *GENETIC TESTING.—A group health plan, or a health*  
16        *insurance issuer offering health insurance coverage in*  
17        *connection with a group health plan, shall not request*  
18        *or require an individual or a family member of such*  
19        *individual to undergo a genetic test.*

20                *“(2) RULE OF CONSTRUCTION.—Nothing in this*  
21        *part shall be construed to—*

22                *“(A) limit the authority of a health care*  
23        *professional who is providing health care services*  
24        *with respect to an individual to request that*

1           *such individual or a family member of such in-*  
2           *dividual undergo a genetic test;*

3           “(B) *limit the authority of a health care*  
4           *professional who is employed by or affiliated*  
5           *with a group health plan or a health insurance*  
6           *issuer and who is providing health care services*  
7           *to an individual as part of a bona fide wellness*  
8           *program to notify such individual of the avail-*  
9           *ability of a genetic test or to provide information*  
10           *to such individual regarding such genetic test; or*

11           “(C) *authorize or permit a health care pro-*  
12           *fessional to require that an individual undergo a*  
13           *genetic test.*

14           “(d) *APPLICATION TO ALL PLANS.—The provisions of*  
15           *subsections (a)(1)(F), (b)(3), and (c) shall apply to group*  
16           *health plans and health insurance issuers without regard*  
17           *to section 2721(a).”.*

18           (3) *REMEDIES AND ENFORCEMENT.—Section*  
19           *2722(b) of the Public Health Service Act (42 U.S.C.*  
20           *300gg–22(b)) is amended by adding at the end the fol-*  
21           *lowing:*

22           “(3) *ENFORCEMENT AUTHORITY RELATING TO*  
23           *GENETIC DISCRIMINATION.—*

24           “(A) *GENERAL RULE.—In the cases de-*  
25           *scribed in paragraph (1), notwithstanding the*

1           provisions of paragraph (2)(C), the following  
2           provisions shall apply with respect to an action  
3           under this subsection by the Secretary with re-  
4           spect to any failure of a health insurance issuer  
5           in connection with a group health plan, to meet  
6           the requirements of subsection (a)(1)(F), (b)(3),  
7           or (c) of section 2702.

8           “(B) AMOUNT.—

9                   “(i) IN GENERAL.—The amount of the  
10                   penalty imposed under this paragraph shall  
11                   be \$100 for each day in the noncompliance  
12                   period with respect to each individual to  
13                   whom such failure relates.

14                   “(ii) NONCOMPLIANCE PERIOD.—For  
15                   purposes of this paragraph, the term ‘non-  
16                   compliance period’ means, with respect to  
17                   any failure, the period—

18                           “(I) beginning on the date such  
19                           failure first occurs; and

20                           “(II) ending on the date such fail-  
21                           ure is corrected.

22           “(C) MINIMUM PENALTIES WHERE FAILURE  
23           DISCOVERED.—Notwithstanding clauses (i) and  
24           (ii) of subparagraph (D):

1           “(i) *IN GENERAL.*—*In the case of 1 or*  
2           *more failures with respect to an indi-*  
3           *vidual—*

4                   “(I) *which are not corrected before*  
5                   *the date on which the plan receives a*  
6                   *notice from the Secretary of such viola-*  
7                   *tion; and*

8                   “(II) *which occurred or continued*  
9                   *during the period involved;*  
10           *the amount of penalty imposed by subpara-*  
11           *graph (A) by reason of such failures with*  
12           *respect to such individual shall not be less*  
13           *than \$2,500.*

14           “(ii) *HIGHER MINIMUM PENALTY*  
15           *WHERE VIOLATIONS ARE MORE THAN DE*  
16           *MINIMIS.*—*To the extent violations for*  
17           *which any person is liable under this para-*  
18           *graph for any year are more than de mini-*  
19           *mis, clause (i) shall be applied by sub-*  
20           *stituting ‘\$15,000’ for ‘\$2,500’ with respect*  
21           *to such person.*

22           “(D) *LIMITATIONS.*—

23                   “(i) *PENALTY NOT TO APPLY WHERE*  
24                   *FAILURE NOT DISCOVERED EXERCISING*  
25                   *REASONABLE DILIGENCE.*—*No penalty shall*

1           *be imposed by subparagraph (A) on any*  
2           *failure during any period for which it is es-*  
3           *tablished to the satisfaction of the Secretary*  
4           *that the person otherwise liable for such*  
5           *penalty did not know, and exercising rea-*  
6           *sonable diligence would not have known,*  
7           *that such failure existed.*

8           “(ii) *PENALTY NOT TO APPLY TO FAIL-*  
9           *URES CORRECTED WITHIN CERTAIN PERI-*  
10           *ODS.—No penalty shall be imposed by sub-*  
11           *paragraph (A) on any failure if—*

12                   “(I) *such failure was due to rea-*  
13                   *sonable cause and not to willful ne-*  
14                   *glect; and*

15                   “(II) *such failure is corrected dur-*  
16                   *ing the 30-day period beginning on the*  
17                   *first date the person otherwise liable*  
18                   *for such penalty knew, or exercising*  
19                   *reasonable diligence would have known,*  
20                   *that such failure existed.*

21           “(iii) *OVERALL LIMITATION FOR UNIN-*  
22           *TENTIONAL FAILURES.—In the case of fail-*  
23           *ures which are due to reasonable cause and*  
24           *not to willful neglect, the penalty imposed*

1                   by subparagraph (A) for failures shall not  
2                   exceed the amount equal to the lesser of—

3                   “(I) 10 percent of the aggregate  
4                   amount paid or incurred by the em-  
5                   ployer (or predecessor employer) dur-  
6                   ing the preceding taxable year for  
7                   group health plans; or

8                   “(II) \$500,000.

9                   “(E) WAIVER BY SECRETARY.—In the case  
10                  of a failure which is due to reasonable cause and  
11                  not to willful neglect, the Secretary may waive  
12                  part or all of the penalty imposed by subpara-  
13                  graph (A) to the extent that the payment of such  
14                  penalty would be excessive relative to the failure  
15                  involved.”.

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

19                  “(15) FAMILY MEMBER.—The term ‘family mem-  
20                  ber’ means with respect to an individual—

21                         “(A) the spouse of the individual;

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

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

4           “(16) *GENETIC INFORMATION.—*

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

8                   “(i) *an individual’s genetic tests;*

9                   “(ii) *the genetic tests of family mem-*  
10 *bers of the individual; or*

11                   “(iii) *the occurrence of a disease or*  
12 *disorder in family members of the indi-*  
13 *vidual.*

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

17           “(17) *GENETIC TEST.—*

18           “(A) *IN GENERAL.—The term ‘genetic test’*  
19 *means an analysis of human DNA, RNA, chro-*  
20 *mosomes, proteins, or metabolites, that detects*  
21 *genotypes, mutations, or chromosomal changes.*

22           “(B) *EXCEPTIONS.—The term ‘genetic test’*  
23 *does not mean—*

1                   “(i) an analysis of proteins or metabo-  
2                   lites that does not detect genotypes,  
3                   mutations, or chromosomal changes; or

4                   “(ii) an analysis of proteins or me-  
5                   tabolites that is directly related to a mani-  
6                   fested disease, disorder, or pathological con-  
7                   dition that could reasonably be detected by  
8                   a health care professional with appropriate  
9                   training and expertise in the field of medi-  
10                  cine involved.

11                  “(18) *GENETIC SERVICES*.—The term ‘genetic  
12                  services’ means—

13                         “(A) a genetic test;

14                         “(B) genetic counseling (such as obtaining,  
15                         interpreting, or assessing genetic information);

16                         or

17                         “(C) genetic education.”.

18                  (b) *AMENDMENT RELATING TO THE INDIVIDUAL MAR-*  
19                  *KET*.—

20                         (1) *IN GENERAL*.—The first subpart 3 of part B  
21                         of title XXVII of the Public Health Service Act (42  
22                         U.S.C. 300gg–51 et seq.) (relating to other require-  
23                         ments) is amended—

24                                 (A) by redesignating such subpart as sub-  
25                                 part 2; and

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

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

4 “(a) *PROHIBITION ON GENETIC INFORMATION AS A*  
5 *CONDITION OF ELIGIBILITY.*—A health insurance issuer of-  
6 fering health insurance coverage in the individual market  
7 may not establish rules for the eligibility (including contin-  
8 ued eligibility) of any individual to enroll in individual  
9 health insurance coverage based on genetic information (in-  
10 cluding information about a request for or receipt of genetic  
11 services by an individual or family member of such indi-  
12 vidual).

13 “(b) *PROHIBITION ON GENETIC INFORMATION IN SET-*  
14 *TING PREMIUM RATES.*—A health insurance issuer offering  
15 health insurance coverage in the individual market shall  
16 not adjust premium or contribution amounts for an indi-  
17 vidual on the basis of genetic information concerning the  
18 individual or a family member of the individual (including  
19 information about a request for or receipt of genetic services  
20 by an individual or family member of such individual).

21 “(c) *GENETIC TESTING.*—

22 “(1) *LIMITATION ON REQUESTING OR REQUIRING*  
23 *GENETIC TESTING.*—A health insurance issuer offer-  
24 ing health insurance coverage in the individual mar-  
25 ket shall not request or require an individual or a

1 *family member of such individual to undergo a ge-*  
2 *netic test.*

3 “(2) *RULE OF CONSTRUCTION.*—*Nothing in this*  
4 *part shall be construed to—*

5 “(A) *limit the authority of a health care*  
6 *professional who is providing health care services*  
7 *with respect to an individual to request that*  
8 *such individual or a family member of such in-*  
9 *dividual undergo a genetic test;*

10 “(B) *limit the authority of a health care*  
11 *professional who is employed by or affiliated*  
12 *with a health insurance issuer and who is pro-*  
13 *viding health care services to an individual as*  
14 *part of a bona fide wellness program to notify*  
15 *such individual of the availability of a genetic*  
16 *test or to provide information to such individual*  
17 *regarding such genetic test; or*

18 “(C) *authorize or permit a health care pro-*  
19 *fessional to require that an individual undergo a*  
20 *genetic test.”.*

21 (2) *REMEDIES AND ENFORCEMENT.*—*Section*  
22 *2761(b) of the Public Health Service Act (42 U.S.C.*  
23 *300gg–61(b)) is amended to read as follows:*

24 “(b) *SECRETARIAL ENFORCEMENT AUTHORITY.*—*The*  
25 *Secretary shall have the same authority in relation to en-*

1 *forcement of the provisions of this part with respect to*  
 2 *issuers of health insurance coverage in the individual mar-*  
 3 *ket in a State as the Secretary has under section 2722(b)(2),*  
 4 *and section 2722(b)(3) with respect to violations of genetic*  
 5 *nondiscrimination provisions, in relation to the enforce-*  
 6 *ment of the provisions of part A with respect to issuers of*  
 7 *health insurance coverage in the small group market in the*  
 8 *State.”.*

9       (c) *ELIMINATION OF OPTION OF NON-FEDERAL GOV-*  
 10 *ERNMENTAL PLANS TO BE EXCEPTED FROM REQUIRE-*  
 11 *MENTS CONCERNING GENETIC INFORMATION.—Section*  
 12 *2721(b)(2) of the Public Health Service Act (42 U.S.C.*  
 13 *300gg–21(b)(2)) is amended—*

14           (1) *in subparagraph (A), by striking “If the*  
 15 *plan sponsor” and inserting “Except as provided in*  
 16 *subparagraph (D), if the plan sponsor”;* and

17           (2) *by adding at the end the following:*

18                   “(D) *ELECTION NOT APPLICABLE TO RE-*  
 19 *QUIREMENTS CONCERNING GENETIC INFORMA-*  
 20 *TION.—The election described in subparagraph*  
 21 *(A) shall not be available with respect to the pro-*  
 22 *visions of subsections (a)(1)(F) and (c) of section*  
 23 *2702 and the provisions of section 2702(b) to the*  
 24 *extent that such provisions apply to genetic in-*  
 25 *formation (or information about a request for or*

1           *the receipt of genetic services by an individual or*  
 2           *a family member of such individual).”.*

3           *(d) REGULATIONS AND EFFECTIVE DATE.—*

4           *(1) REGULATIONS.—Not later than 1 year after*  
 5           *the date of enactment of this title, the Secretary of*  
 6           *Health and Human Services shall issue final regula-*  
 7           *tions to carry out the amendments made by this sec-*  
 8           *tion.*

9           *(2) EFFECTIVE DATE.—The amendments made*  
 10          *by this section shall apply—*

11           *(A) with respect to group health plans, and*  
 12           *health insurance coverage offered in connection*  
 13           *with group health plans, for plan years begin-*  
 14           *ning after the date that is 18 months after the*  
 15           *date of enactment of this title; and*

16           *(B) with respect to health insurance cov-*  
 17           *erage offered, sold, issued, renewed, in effect, or*  
 18           *operated in the individual market after the date*  
 19           *that is 18 months after the date of enactment of*  
 20           *this title.*

21   **SEC. 103. AMENDMENTS TO TITLE XVIII OF THE SOCIAL SE-**  
 22                            **CURITY ACT RELATING TO MEDIGAP.**

23           *(a) NONDISCRIMINATION.—*

1           (1) *IN GENERAL.*—Section 1882(s)(2) of the So-  
2           cial Security Act (42 U.S.C. 1395ss(s)(2)) is amended  
3           by adding at the end the following:

4                   “(E)(i) An issuer of a medicare supple-  
5                   mental policy shall not deny or condition the  
6                   issuance or effectiveness of the policy, and shall  
7                   not discriminate in the pricing of the policy (in-  
8                   cluding the adjustment of premium rates) of an  
9                   eligible individual on the basis of genetic infor-  
10                  mation concerning the individual (or informa-  
11                  tion about a request for, or the receipt of, genetic  
12                  services by such individual or family member of  
13                  such individual).

14                   “(i) For purposes of clause (i), the terms  
15                   ‘family member’, ‘genetic services’, and ‘genetic  
16                   information’ shall have the meanings given such  
17                   terms in subsection (x).”.

18           (2) *EFFECTIVE DATE.*—The amendment made by  
19           paragraph (1) shall apply with respect to a policy for  
20           policy years beginning after the date that is 18  
21           months after the date of enactment of this Act.

22           (b) *LIMITATIONS ON GENETIC TESTING.*—

23                   (1) *IN GENERAL.*—Section 1882 of the Social Se-  
24                   curity Act (42 U.S.C. 1395ss) is amended by adding  
25                   at the end the following:

1       “(x) *LIMITATIONS ON GENETIC TESTING.*—

2               “(1) *GENETIC TESTING.*—

3                       “(A) *LIMITATION ON REQUESTING OR RE-*  
4                       *QUIRING GENETIC TESTING.*—*An issuer of a*  
5                       *medicare supplemental policy shall not request*  
6                       *or require an individual or a family member of*  
7                       *such individual to undergo a genetic test.*

8                       “(B) *RULE OF CONSTRUCTION.*—*Nothing in*  
9                       *this title shall be construed to—*

10                               “(i) *limit the authority of a health*  
11                               *care professional who is providing health*  
12                               *care services with respect to an individual*  
13                               *to request that such individual or a family*  
14                               *member of such individual undergo a ge-*  
15                               *netic test;*

16                               “(ii) *limit the authority of a health*  
17                               *care professional who is employed by or af-*  
18                               *filiated with an issuer of a medicare supple-*  
19                               *mental policy and who is providing health*  
20                               *care services to an individual as part of a*  
21                               *bona fide wellness program to notify such*  
22                               *individual of the availability of a genetic*  
23                               *test or to provide information to such indi-*  
24                               *vidual regarding such genetic test; or*

1                   “(iii) authorize or permit a health care  
2                   professional to require that an individual  
3                   undergo a genetic test.

4                   “(2) DEFINITIONS.—In this subsection:

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

7                   “(i) the spouse of the individual;

8                   “(ii) a dependent child of the indi-  
9                   vidual, including a child who is born to or  
10                  placed for adoption with the individual; or

11                  “(iii) any other individuals related by  
12                  blood to the individual or to the spouse or  
13                  child described in clause (i) or (ii).

14                  “(B) GENETIC INFORMATION.—

15                  “(i) IN GENERAL.—Except as provided  
16                  in clause (ii), the term ‘genetic information’  
17                  means information about—

18                  “(I) an individual’s genetic tests;

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

21                  “(III) the occurrence of a disease  
22                  or disorder in family members of the  
23                  individual.

1                   “(ii) *EXCLUSIONS.*—*The term ‘genetic*  
2                   *information’ shall not include information*  
3                   *about the sex or age of an individual.*

4                   “(C) *GENETIC TEST.*—

5                   “(i) *IN GENERAL.*—*The term ‘genetic*  
6                   *test’ means an analysis of human DNA,*  
7                   *RNA, chromosomes, proteins, or metabolites,*  
8                   *that detects genotypes, mutations, or chro-*  
9                   *mosomal changes.*

10                  “(ii) *EXCEPTIONS.*—*The term ‘genetic*  
11                  *test’ does not mean—*

12                   “(I) *an analysis of proteins or*  
13                   *metabolites that does not detect*  
14                   *genotypes, mutations, or chromosomal*  
15                   *changes; or*

16                   “(II) *an analysis of proteins or*  
17                   *metabolites that is directly related to a*  
18                   *manifested disease, disorder, or patho-*  
19                   *logical condition that could reasonably*  
20                   *be detected by a health care profes-*  
21                   *sional with appropriate training and*  
22                   *expertise in the field of medicine in-*  
23                   *volved.*

24                  “(D) *GENETIC SERVICES.*—*The term ‘ge-*  
25                  *netic services’ means—*

1                   “(i) a genetic test;

2                   “(ii) genetic counseling (such as ob-  
3                   taining, interpreting, or assessing genetic  
4                   information); or

5                   “(iii) genetic education.

6                   “(E) ISSUER OF A MEDICARE SUPPLE-  
7                   MENTAL POLICY.—The term ‘issuer of a medicare  
8                   supplemental policy’ includes a third-party ad-  
9                   ministrators or other person acting for or on be-  
10                  half of such issuer.”.

11                  (2) CONFORMING AMENDMENT.—Section 1882(o)  
12                  of the Social Security Act (42 U.S.C. 1395ss(o)) is  
13                  amended by adding at the end the following:

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

17                  (3) EFFECTIVE DATE.—The amendments made  
18                  by this subsection shall apply with respect to an  
19                  issuer of a medicare supplemental policy for policy  
20                  years beginning on or after the date that is 18 months  
21                  after the date of enactment of this Act.

22                  (c) TRANSITION PROVISIONS.—

23                  (1) IN GENERAL.—If the Secretary of Health and  
24                  Human Services identifies a State as requiring a  
25                  change to its statutes or regulations to conform its

1 *regulatory program to the changes made by this sec-*  
2 *tion, the State regulatory program shall not be con-*  
3 *sidered to be out of compliance with the requirements*  
4 *of section 1882 of the Social Security Act due solely*  
5 *to failure to make such change until the date specified*  
6 *in paragraph (4).*

7 (2) *NAIC STANDARDS.—If, not later than June*  
8 *30, 2008, the National Association of Insurance Com-*  
9 *missioners (in this subsection referred to as the*  
10 *“NAIC”) modifies its NAIC Model Regulation relat-*  
11 *ing to section 1882 of the Social Security Act (re-*  
12 *ferred to in such section as the 1991 NAIC Model*  
13 *Regulation, as subsequently modified) to conform to*  
14 *the amendments made by this section, such revised*  
15 *regulation incorporating the modifications shall be*  
16 *considered to be the applicable NAIC model regulation*  
17 *(including the revised NAIC model regulation and the*  
18 *1991 NAIC Model Regulation) for the purposes of*  
19 *such section.*

20 (3) *SECRETARY STANDARDS.—If the NAIC does*  
21 *not make the modifications described in paragraph*  
22 *(2) within the period specified in such paragraph, the*  
23 *Secretary of Health and Human Services shall, not*  
24 *later than October 1, 2008, make the modifications*  
25 *described in such paragraph and such revised regula-*

1        *tion incorporating the modifications shall be consid-*  
2        *ered to be the appropriate regulation for the purposes*  
3        *of such section.*

4            (4) *DATE SPECIFIED.—*

5                    (A) *IN GENERAL.—Subject to subparagraph*  
6                    (B), *the date specified in this paragraph for a*  
7                    *State is the earlier of—*

8                            (i) *the date the State changes its stat-*  
9                            *utes or regulations to conform its regulatory*  
10                           *program to the changes made by this sec-*  
11                           *tion, or*

12                           (ii) *October 1, 2008.*

13                    (B) *ADDITIONAL LEGISLATIVE ACTION RE-*  
14                    *QUIRED.—In the case of a State which the Sec-*  
15                    *retary identifies as—*

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

20                           (ii) *having a legislature which is not*  
21                           *scheduled to meet in 2008 in a legislative*  
22                           *session in which such legislation may be*  
23                           *considered, the date specified in this para-*  
24                           *graph is the first day of the first calendar*  
25                           *quarter beginning after the close of the first*

1           *legislative session of the State legislature*  
2           *that begins on or after July 1, 2008. For*  
3           *purposes of the previous sentence, in the*  
4           *case of a State that has a 2-year legislative*  
5           *session, each year of such session shall be*  
6           *deemed to be a separate regular session of*  
7           *the State legislature.*

8   **SEC. 104. PRIVACY AND CONFIDENTIALITY.**

9           *(a) RULES FOR PUBLIC HEALTH SERVICE ACT AND*  
10          *INTERNAL REVENUE CODE OF 1986.—*

11                  *(1) APPLICABILITY.—Except as provided in*  
12                  *paragraph (4), the provisions of this subsection shall*  
13                  *apply to group health plans (other than group health*  
14                  *plans to which section 714 of the Employee Retirement*  
15                  *Income Security Act of 1974 applies), health in-*  
16                  *surance issuers (including issuers in connection with*  
17                  *group health plans or individual health coverage),*  
18                  *and issuers of medicare supplemental policies, with-*  
19                  *out regard to—*

20                          *(A) section 2721(a) of the Public Health*  
21                          *Service Act (42 U.S.C. 300gg-21(a)); and*

22                          *(B) section 9831(a)(2) of the Internal Rev-*  
23                          *enue Code of 1986.*

1           (2) *COMPLIANCE WITH CERTAIN CONFIDEN-*  
2           *TIALITY STANDARDS WITH RESPECT TO GENETIC IN-*  
3           *FORMATION.—*

4                   (A) *IN GENERAL.—The regulations promul-*  
5                   *gated by the Secretary of Health and Human*  
6                   *Services under part C of title XI of the Social*  
7                   *Security Act (42 U.S.C. 1320d et seq.) and sec-*  
8                   *tion 264 of the Health Insurance Portability and*  
9                   *Accountability Act of 1996 (42 U.S.C. 1320d–2*  
10                   *note) shall apply to the use or disclosure of ge-*  
11                   *netic information.*

12                   (B) *PROHIBITION ON UNDERWRITING AND*  
13                   *PREMIUM RATING.—Notwithstanding subpara-*  
14                   *graph (A), a group health plan, a health insur-*  
15                   *ance issuer, or issuer of a medicare supplemental*  
16                   *policy shall not use or disclose genetic informa-*  
17                   *tion (including information about a request for*  
18                   *or a receipt of genetic services by an individual*  
19                   *or family member of such individual) for pur-*  
20                   *poses of underwriting, determinations of eligi-*  
21                   *bility to enroll, premium rating, or the creation,*  
22                   *renewal or replacement of a plan, contract or*  
23                   *coverage for health insurance or health benefits.*

24           (3) *PROHIBITION ON COLLECTION OF GENETIC*  
25           *INFORMATION.—*

1           (A) *IN GENERAL.*—A group health plan,  
2 health insurance issuer, or issuer of a medicare  
3 supplemental policy shall not request, require, or  
4 purchase genetic information (including infor-  
5 mation about a request for or a receipt of genetic  
6 services by an individual or family member of  
7 such individual) for purposes of underwriting,  
8 determinations of eligibility to enroll, premium  
9 rating, or the creation, renewal or replacement of  
10 a plan, contract or coverage for health insurance  
11 or health benefits.

12           (B) *LIMITATION RELATING TO THE COLLEC-*  
13 *TION OF GENETIC INFORMATION PRIOR TO EN-*  
14 *ROLLMENT.*—A group health plan, health insur-  
15 ance issuer, or issuer of a medicare supplemental  
16 policy shall not request, require, or purchase ge-  
17 netic information (including information about  
18 a request for or a receipt of genetic services by  
19 an individual or family member of such indi-  
20 vidual) concerning a participant, beneficiary, or  
21 enrollee prior to the enrollment, and in connec-  
22 tion with such enrollment, of such individual  
23 under the plan, coverage, or policy.

24           (C) *INCIDENTAL COLLECTION.*—Where a  
25 group health plan, health insurance issuer, or

1           *issuer of a medicare supplemental policy obtains*  
2           *genetic information incidental to the requesting,*  
3           *requiring, or purchasing of other information*  
4           *concerning a participant, beneficiary, or en-*  
5           *rollee, such request, requirement, or purchase*  
6           *shall not be considered a violation of this para-*  
7           *graph if—*

8                     *(i) such request, requirement, or pur-*  
9                     *chase is not in violation of subparagraph*  
10                    *(A); and*

11                    *(ii) any genetic information (including*  
12                    *information about a request for or receipt of*  
13                    *genetic services) requested, required, or pur-*  
14                    *chased is not used or disclosed in violation*  
15                    *of paragraph (2).*

16            (4) *APPLICATION OF CONFIDENTIALITY STAND-*  
17            *ARDS.—The provisions of paragraphs (2) and (3)*  
18            *shall not apply—*

19                    *(A) to group health plans, health insurance*  
20                    *issuers, or issuers of medicare supplemental poli-*  
21                    *cies that are not otherwise covered under the reg-*  
22                    *ulations promulgated by the Secretary of Health*  
23                    *and Human Services under part C of title XI of*  
24                    *the Social Security Act (42 U.S.C. 1320d et seq.)*  
25                    *and section 264 of the Health Insurance Port-*

1           *ability and Accountability Act of 1996 (42*  
2           *U.S.C. 1320d–2 note); and*

3                   *(B) to genetic information that is not con-*  
4                   *sidered to be individually-identifiable health in-*  
5                   *formation under the regulations promulgated by*  
6                   *the Secretary of Health and Human Services*  
7                   *under part C of title XI of the Social Security*  
8                   *Act (42 U.S.C. 1320d et seq.) and section 264 of*  
9                   *the Health Insurance Portability and Account-*  
10                  *ability Act of 1996 (42 U.S.C. 1320d–2 note).*

11                  (5) *ENFORCEMENT.*—*A group health plan, health*  
12                  *insurance issuer, or issuer of a medicare supple-*  
13                  *mental policy that violates a provision of this sub-*  
14                  *section shall be subject to the penalties described in*  
15                  *sections 1176 and 1177 of the Social Security Act (42*  
16                  *U.S.C. 1320d–5 and 1320d–6) in the same manner*  
17                  *and to the same extent that such penalties apply to*  
18                  *violations of part C of title XI of such Act.*

19                  (6) *PREEMPTION.*—

20                         (A) *IN GENERAL.*—*A provision or require-*  
21                         *ment under this subsection or a regulation pro-*  
22                         *mulgated under this subsection shall supersede*  
23                         *any contrary provision of State law unless such*  
24                         *provision of State law imposes requirements,*  
25                         *standards, or implementation specifications that*

1           *are more stringent than the requirements, stand-*  
2           *ards, or implementation specifications imposed*  
3           *under this subsection or such regulations. No*  
4           *penalty, remedy, or cause of action to enforce*  
5           *such a State law that is more stringent shall be*  
6           *preempted by this subsection.*

7           *(B) RULE OF CONSTRUCTION.—Nothing in*  
8           *subparagraph (A) shall be construed to establish*  
9           *a penalty, remedy, or cause of action under*  
10          *State law if such penalty, remedy, or cause of*  
11          *action is not otherwise available under such*  
12          *State law.*

13          *(7) COORDINATION WITH PRIVACY REGULA-*  
14          *TIONS.—The Secretary shall implement and admin-*  
15          *ister this subsection in a manner that is consistent*  
16          *with the implementation and administration by the*  
17          *Secretary of the regulations promulgated by the Sec-*  
18          *retary of Health and Human Services under part C*  
19          *of title XI of the Social Security Act (42 U.S.C.*  
20          *1320d et seq.) and section 264 of the Health Insur-*  
21          *ance Portability and Accountability Act of 1996 (42*  
22          *U.S.C. 1320d–2 note).*

23          *(8) DEFINITIONS.—In this subsection:*

24                  *(A) GENETIC INFORMATION; GENETIC SERV-*  
25                  *ICES.—The terms “family member”, “genetic in-*

1           *formation*”, “*genetic services*”, and “*genetic test*”  
2           *have the meanings given such terms in section*  
3           *2791 of the Public Health Service Act (42 U.S.C.*  
4           *300gg–91), as amended by this Act.*

5           *(B) GROUP HEALTH PLAN; HEALTH INSUR-*  
6           *ANCE ISSUER.—The terms “group health plan”*  
7           *and “health insurance issuer” include only those*  
8           *plans and issuers that are covered under the reg-*  
9           *ulations described in paragraph (4)(A).*

10           *(C) ISSUER OF A MEDICARE SUPPLEMENTAL*  
11           *POLICY.—The term “issuer of a medicare supple-*  
12           *mental policy” means an issuer described in sec-*  
13           *tion 1882 of the Social Security Act (42 U.S.C.*  
14           *1395ss).*

15           *(D) SECRETARY.—The term “Secretary”*  
16           *means the Secretary of Health and Human Serv-*  
17           *ices.*

18           *(b) AMENDMENTS TO ERISA.—*

19           *(1) IN GENERAL.—Subpart B of part 7 of sub-*  
20           *title B of title I of the Employee Retirement Income*  
21           *Security Act of 1974 is amended by adding after sec-*  
22           *tion 713 (29 U.S.C. 1185b) the following new section:*

1 **“SEC. 714. PRIVACY AND CONFIDENTIALITY OF GENETIC IN-**  
2 **FORMATION.**

3 “(a) *APPLICABILITY.*—*Except as provided in sub-*  
4 *section (d), the provisions of this section shall apply to*  
5 *group health plans, and health insurance issuers offering*  
6 *health insurance coverage in connection with such plans,*  
7 *without regard to section 732(a).*

8 “(b) *PROHIBITION ON UNDERWRITING, ELIGIBILITY*  
9 *TERMINATION, PREMIUM RATING, AND PLAN FORMULA-*  
10 *TION.*—*Notwithstanding section 104(a)(2)(A) of the Genetic*  
11 *Information Nondiscrimination Act of 2007, a group health*  
12 *plan, or a health insurance issuer offering health insurance*  
13 *coverage in connection with such a plan, shall not use or*  
14 *disclose genetic information (including information about*  
15 *a request for or a receipt of genetic services by an indi-*  
16 *vidual or family member of such individual) for purposes*  
17 *of underwriting, determinations of eligibility to enroll, pre-*  
18 *mium rating, or the creation, renewal, or replacement of*  
19 *a group health plan or health insurance coverage offered*  
20 *in connection with such a plan.*

21 “(c) *PROHIBITION ON COLLECTION OF GENETIC IN-*  
22 *FORMATION.*—

23 “(1) *IN GENERAL.*—*A group health plan, or a*  
24 *health insurance issuer offering health insurance cov-*  
25 *erage in connection with such a plan, shall not re-*  
26 *quest, require, or purchase genetic information (in-*

1 *cluding information about a request for or a receipt*  
2 *of genetic services by an individual or family member*  
3 *of such individual) for purposes of underwriting, de-*  
4 *terminations of eligibility to enroll, premium rating,*  
5 *or the creation, renewal or replacement of a plan,*  
6 *contract or coverage for health insurance or health*  
7 *benefits.*

8 *“(2) LIMITATION RELATING TO THE COLLECTION*  
9 *OF GENETIC INFORMATION PRIOR TO ENROLLMENT.—*

10 *A group health plan, or a health insurance issuer of-*  
11 *fering health insurance coverage in connection with*  
12 *such a plan, shall not request, require, or purchase ge-*  
13 *netic information (including information about a re-*  
14 *quest for or a receipt of genetic services by an indi-*  
15 *vidual or family member of such individual) con-*  
16 *cerning a participant or beneficiary prior to the en-*  
17 *rollment, and in connection with such enrollment, of*  
18 *such participant or beneficiary under the plan or cov-*  
19 *erage.*

20 *“(3) INCIDENTAL COLLECTION.—Where a group*  
21 *health plan, or a health insurance issuer offering*  
22 *health insurance coverage in connection with such a*  
23 *plan, obtains genetic information incidental to the re-*  
24 *questing, requiring, or purchasing of other informa-*  
25 *tion concerning a participant or beneficiary, such re-*

1        *quest, requirement, or purchase shall not be consid-*  
2        *ered a violation of this subsection if—*

3                *“(A) such request, requirement, or purchase*  
4                *is not in violation of paragraph (1); and*

5                *“(B) any genetic information (including in-*  
6                *formation about a request for or receipt of ge-*  
7                *netic services) requested, required, or purchased*  
8                *is not used or disclosed in violation of subsection*  
9                *(b).*

10        *“(d) APPLICATION OF CONFIDENTIALITY STAND-*  
11        *ARDS.—The provisions of subsections (b) and (c) shall not*  
12        *apply—*

13                *“(1) to group health plans, or health insurance*  
14                *issuers offering health insurance coverage in connec-*  
15                *tion with such plans, that are not otherwise covered*  
16                *under the regulations promulgated by the Secretary of*  
17                *Health and Human Services under part C of title XI*  
18                *of the Social Security Act (42 U.S.C. 1320d et seq.)*  
19                *and section 264 of the Health Insurance Portability*  
20                *and Accountability Act of 1996 (42 U.S.C. 1320d–2*  
21                *note); and*

22                *“(2) to genetic information that is not considered*  
23                *to be individually-identifiable health information*  
24                *under the regulations promulgated by the Secretary of*  
25                *Health and Human Services under part C of title XI*

1       *of the Social Security Act (42 U.S.C. 1320d et seq.)*  
2       *and section 264 of the Health Insurance Portability*  
3       *and Accountability Act of 1996 (42 U.S.C. 1320d–2*  
4       *note).*

5       “(e) *DEFINITIONS.—In this section:*

6               “(1) *GENETIC INFORMATION; GENETIC SERV-*  
7       *ICES.—The terms ‘family member’, ‘genetic informa-*  
8       *tion’, ‘genetic services’, and ‘genetic test’ have the*  
9       *meanings given such terms in section 733(d).*

10              “(2) *GROUP HEALTH PLAN; HEALTH INSURANCE*  
11       *ISSUER.—The terms ‘group health plan’ and ‘health*  
12       *insurance issuer’ include only those plans and issuers*  
13       *that are covered under the regulations described in*  
14       *subsection (d)(1).”.*

15              “(2) *PREEMPTION.—Section 731 of such Act (29*  
16       *U.S.C. 1191) is amended—*

17                      *(A) by redesignating subsections (c) and (d)*  
18                      *as subsections (d) and (e), respectively;*

19                      *(B) in subsection (a)(1), by striking “sub-*  
20                      *section (b)” and inserting “subsections (b) and*  
21                      *(c)”;* and

22                      *(C) by inserting after subsection (b) the fol-*  
23                      *lowing new subsection:*

24              “(c) *SPECIAL RULES RELATING TO PRIVACY AND CON-*  
25       *FIDENTIALITY OF GENETIC INFORMATION.—*

1           “(1) *IN GENERAL.*—A provision or requirement  
2           under section 714 or a regulation promulgated under  
3           such section shall supersede any contrary provision of  
4           State law unless such provision of State law imposes  
5           requirements, standards, or implementation specifica-  
6           tions that are more stringent than the requirements,  
7           standards, or implementation specifications imposed  
8           under such section or such regulations. No penalty,  
9           remedy, or cause of action to enforce such a State law  
10          that is more stringent shall be preempted by such sec-  
11          tion.

12           “(2) *RULE OF CONSTRUCTION.*—Nothing in  
13          paragraph (1) shall be construed to establish a pen-  
14          alty, remedy, or cause of action under State law if  
15          such penalty, remedy, or cause of action is not other-  
16          wise available under such State law.”.

17           “(3) *CONFORMING AMENDMENT.*—The table of  
18          contents in section 1 of such Act is amended by in-  
19          serting after the item relating to section 713 the fol-  
20          lowing new item:

          “Sec. 714. *Privacy and confidentiality of genetic information.*”.

21       **SEC. 105. ASSURING COORDINATION.**

22           “(a) *IN GENERAL.*—Except as provided in subsection  
23          (b), the Secretary of Health and Human Services, the Sec-  
24          retary of Labor, and the Secretary of the Treasury shall

1 *ensure, through the execution of an interagency memo-*  
2 *randum of understanding among such Secretaries, that—*

3           (1) *regulations, rulings, and interpretations*  
4 *issued by such Secretaries relating to the same matter*  
5 *over which two or more such Secretaries have respon-*  
6 *sibility under this title (and the amendments made by*  
7 *this title) are administered so as to have the same ef-*  
8 *fect at all times; and*

9           (2) *coordination of policies relating to enforcing*  
10 *the same requirements through such Secretaries in*  
11 *order to have a coordinated enforcement strategy that*  
12 *avoids duplication of enforcement efforts and assigns*  
13 *priorities in enforcement.*

14       (b) *AUTHORITY OF THE SECRETARY.—The Secretary*  
15 *of Health and Human Services has the sole authority to*  
16 *promulgate regulations to implement section 104(a).*

17 **SEC. 106. REGULATIONS; EFFECTIVE DATE.**

18       (a) *REGULATIONS.—Not later than 1 year after the*  
19 *date of enactment of this title, the Secretary of Health and*  
20 *Human Services, the Secretary of Labor, and the Secretary*  
21 *of the Treasury shall issue final regulations to carry out*  
22 *this title.*

23       (b) *EFFECTIVE DATE.—Except as provided in section*  
24 *103, the amendments made by this title shall take effect on*

1 *the date that is 18 months after the date of enactment of*  
2 *this Act.*

3 **TITLE II—PROHIBITING EMPLOY-**  
4 **MENT DISCRIMINATION ON**  
5 **THE BASIS OF GENETIC IN-**  
6 **FORMATION**

7 **SEC. 201. DEFINITIONS.**

8 *In this title:*

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

13 (2) *EMPLOYEE; EMPLOYER; EMPLOYMENT AGEN-*  
14 *CY; LABOR ORGANIZATION; MEMBER.*—

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

17 (i) *an employee (including an appli-*  
18 *cant), as defined in section 701(f) of the*  
19 *Civil Rights Act of 1964 (42 U.S.C.*  
20 *2000e(f));*

21 (ii) *a State employee (including an*  
22 *applicant) described in section 304(a) of the*  
23 *Government Employee Rights Act of 1991*  
24 *(42 U.S.C. 2000e–16c(a));*

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

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

8           (v) an employee or applicant to which  
9           section 717(a) of the Civil Rights Act of  
10          1964 (42 U.S.C. 2000e–16(a)) applies.

11          (B) *EMPLOYER.*—The term “employer”  
12          means—

13           (i) an employer (as defined in section  
14           701(b) of the Civil Rights Act of 1964 (42  
15           U.S.C. 2000e(b)));

16           (ii) an entity employing a State em-  
17           ployee described in section 304(a) of the  
18           Government Employee Rights Act of 1991;

19           (iii) an employing office, as defined in  
20           section 101 of the Congressional Account-  
21           ability Act of 1995;

22           (iv) an employing office, as defined in  
23           section 411(c) of title 3, United States Code;  
24           or

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

3                   (C) *EMPLOYMENT AGENCY; LABOR ORGANI-*  
4                   *ZATION.—The terms “employment agency” and*  
5                   *“labor organization” have the meanings given*  
6                   *the terms in section 701 of the Civil Rights Act*  
7                   *of 1964 (42 U.S.C. 2000e).*

8                   (D) *MEMBER.—The term “member”, with*  
9                   *respect to a labor organization, includes an ap-*  
10                  *plicant for membership in a labor organization.*

11                  (3) *FAMILY MEMBER.—The term “family mem-*  
12                  *ber” means with respect to an individual—*

13                         (A) *the spouse of the individual;*

14                         (B) *a dependent child of the individual; and*

15                         (C) *any other individual who is a first-de-*  
16                         *gree, second-degree, third-degree, or fourth-degree*  
17                         *relative of an individual described in subpara-*  
18                         *graph (A) or (B).*

19                  (4) *GENETIC INFORMATION.—*

20                         (A) *IN GENERAL.—Except as provided in*  
21                         *subparagraph (B), the term “genetic informa-*  
22                         *tion” means information about—*

23                                 (i) *an individual’s genetic tests;*

24                                 (ii) *the genetic tests of family members*  
25                                 *of the individual; or*

1                   (iii) the occurrence of a disease or dis-  
2                   order in family members of the individual.

3                   (B) *EXCEPTIONS.*—The term “genetic infor-  
4                   mation” shall not include information about the  
5                   sex or age of an individual.

6                   (5) *GENETIC MONITORING.*—The term “genetic  
7                   monitoring” means the periodic examination of em-  
8                   ployees to evaluate acquired modifications to their ge-  
9                   netic material, such as chromosomal damage or evi-  
10                  dence of increased occurrence of mutations, that may  
11                  have developed in the course of employment due to ex-  
12                  posure to toxic substances in the workplace, in order  
13                  to identify, evaluate, and respond to the effects of or  
14                  control adverse environmental exposures in the work-  
15                  place.

16                  (6) *GENETIC SERVICES.*—The term “genetic serv-  
17                  ices” means—

18                         (A) a genetic test;

19                         (B) genetic counseling (including obtaining,  
20                         interpreting or assessing genetic information); or

21                         (C) genetic education.

22                  (7) *GENETIC TEST.*—

23                         (A) *IN GENERAL.*—The term “genetic test”  
24                         means the analysis of human DNA, RNA, chro-

1            *mosomes, proteins, or metabolites, that detects*  
2            *genotypes, mutations, or chromosomal changes.*

3            *(B) EXCEPTION.—The term “genetic test”*  
4            *does not mean an analysis of proteins or metabo-*  
5            *lites that does not detect genotypes, mutations, or*  
6            *chromosomal changes.*

7    **SEC. 202. EMPLOYER PRACTICES.**

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

11           *(1) to fail or refuse to hire or to discharge any*  
12           *employee, or otherwise to discriminate against any*  
13           *employee with respect to the compensation, terms,*  
14           *conditions, or privileges of employment of the em-*  
15           *ployee, because of genetic information with respect to*  
16           *the employee (or information about a request for or*  
17           *the receipt of genetic services by such employee or*  
18           *family member of such employee); or*

19           *(2) to limit, segregate, or classify the employees*  
20           *of the employer in any way that would deprive or*  
21           *tend to deprive any employee of employment opportu-*  
22           *nities or otherwise adversely affect the status of the*  
23           *employee as an employee, because of genetic informa-*  
24           *tion with respect to the employee (or information*  
25           *about a request for or the receipt of genetic services*

1        *by such employee or family member of such em-*  
2        *ployee).*

3        *(b) ACQUISITION OF GENETIC INFORMATION.—It shall*  
4        *be an unlawful employment practice for an employer to re-*  
5        *quest, require, or purchase genetic information with respect*  
6        *to an employee or a family member of the employee (or in-*  
7        *formation about a request for the receipt of genetic services*  
8        *by such employee or a family member of such employee)*  
9        *except—*

10            *(1) where an employer inadvertently requests or*  
11            *requires family medical history of the employee or*  
12            *family member of the employee;*

13            *(2) where—*

14                    *(A) health or genetic services are offered by*  
15                    *the employer, including such services offered as*  
16                    *part of a bona fide wellness program;*

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

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

1           (D) any individually identifiable genetic  
2           information provided under subparagraph (C) in  
3           connection with the services provided under sub-  
4           paragraph (A) is only available for purposes of  
5           such services and shall not be disclosed to the em-  
6           ployer except in aggregate terms that do not dis-  
7           close the identity of specific employees;

8           (3) where an employer requests or requires fam-  
9           ily medical history from the employee to comply with  
10          the certification provisions of section 103 of the Fam-  
11          ily and Medical Leave Act of 1993 (29 U.S.C. 2613),  
12          such requirements under State family and medical  
13          leave laws;

14          (4) where an employer purchases documents that  
15          are commercially and publicly available (including  
16          newspapers, magazines, periodicals, and books, but  
17          not including medical databases or court records) that  
18          include family medical history; or

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

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

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

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

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

5           (D) the monitoring is in compliance with—

6                 (i) any Federal genetic monitoring reg-  
7                 ulations, 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 seq.*),  
13                or the Atomic Energy Act of 1954 (42  
14                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 employer, excluding any licensed  
22           health care professional or board certified genetic  
23           counselor that is involved in the genetic moni-  
24           toring program, receives the results of the moni-

1            *toring only in aggregate terms that do not dis-*  
2            *close the identity of specific employees.*

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

8            **SEC. 203. EMPLOYMENT AGENCY PRACTICES.**

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

12           *(1) to fail or refuse to refer for employment, or*  
13           *otherwise to discriminate against, any individual be-*  
14           *cause of genetic information with respect to the indi-*  
15           *vidual (or information about a request for or the re-*  
16           *ceipt of genetic services by such individual or family*  
17           *member of such individual);*

18           *(2) to limit, segregate, or classify individuals or*  
19           *fail or refuse to refer for employment any individual*  
20           *in any way that would deprive or tend to deprive any*  
21           *individual of employment opportunities, or otherwise*  
22           *adversely affect the status of the individual as an em-*  
23           *ployee, because of genetic information with respect to*  
24           *the individual (or information about a request for or*

1        *the receipt of genetic services by such individual or*  
2        *family member of such individual); or*

3            (3) *to cause or attempt to cause an employer to*  
4        *discriminate against an individual in violation of*  
5        *this title.*

6        (b) *ACQUISITION OF GENETIC INFORMATION.—It shall*  
7        *be an unlawful employment practice for an employment*  
8        *agency to request, require, or purchase genetic information*  
9        *with respect to an individual or a family member of the*  
10       *individual (or information about a request for the receipt*  
11       *of genetic services by such individual or a family member*  
12       *of such individual) except—*

13            (1) *where an employment agency inadvertently*  
14        *requests or requires family medical history of the in-*  
15        *dividual or family member of the individual;*

16            (2) *where—*

17                    (A) *health or genetic services are offered by*  
18        *the employment agency, including such services*  
19        *offered as part of a bona fide wellness program;*

20                    (B) *the individual provides prior, knowing,*  
21        *voluntary, and written authorization;*

22                    (C) *only the individual (or family member*  
23        *if the family member is receiving genetic serv-*  
24        *ices) and the licensed health care professional or*  
25        *board certified genetic counselor involved in pro-*

1            *viding such services receive individually identifi-*  
2            *able information concerning the results of such*  
3            *services; and*

4            *(D) any individually identifiable genetic*  
5            *information provided under subparagraph (C) in*  
6            *connection with the services provided under sub-*  
7            *paragraph (A) is only available for purposes of*  
8            *such services and shall not be disclosed to the em-*  
9            *ployment agency except in aggregate terms that*  
10           *do not disclose the identity of specific individ-*  
11           *uals;*

12           *(3) where an employment agency requests or re-*  
13           *quires family medical history from the individual to*  
14           *comply with the certification provisions of section 103*  
15           *of the Family and Medical Leave Act of 1993 (29*  
16           *U.S.C. 2613) or such requirements under State family*  
17           *and medical leave laws;*

18           *(4) where an employment agency purchases doc-*  
19           *uments that are commercially and publicly available*  
20           *(including newspapers, magazines, periodicals, and*  
21           *books, but not including medical databases or court*  
22           *records) that include family medical history; or*

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

1           (A) the employment agency provides written  
2 notice of the genetic monitoring to the indi-  
3 vidual;

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

6           (ii) the genetic monitoring is required by  
7 Federal or State law;

8           (C) the individual is informed of individual  
9 monitoring results;

10          (D) the monitoring is in compliance with—

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

20           (ii) State genetic monitoring regula-  
21 tions, in the case of a State that is imple-  
22 menting genetic monitoring regulations  
23 under the authority of the Occupational  
24 Safety and Health Act of 1970 (29 U.S.C.  
25 651 et seq.); and

1           (E) the employment agency, excluding any  
2           licensed health care professional or board cer-  
3           tified genetic counselor that is involved in the ge-  
4           netic monitoring program, receives the results of  
5           the monitoring only in aggregate terms that do  
6           not disclose the identity of specific individuals.

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

12          **SEC. 204. LABOR ORGANIZATION PRACTICES.**

13          (a) *DISCRIMINATION BASED ON GENETIC INFORMA-*  
14          *TION.*—It shall be an unlawful employment practice for a  
15          labor organization—

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

22               (2) to limit, segregate, or classify the members of  
23               the organization, or fail or refuse to refer for employ-  
24               ment any member, in any way that would deprive or  
25               tend to deprive any member of employment opportu-

1        *nities, or otherwise adversely affect the status of the*  
2        *member as an employee, because of genetic informa-*  
3        *tion with respect to the member (or information about*  
4        *a request for or the receipt of genetic services by such*  
5        *member or family member of such member); or*

6                *(3) to cause or attempt to cause an employer to*  
7        *discriminate against a member in violation of this*  
8        *title.*

9        *(b) ACQUISITION OF GENETIC INFORMATION.—It shall*  
10        *be an unlawful employment practice for a labor organiza-*  
11        *tion to request, require, or purchase genetic information*  
12        *with respect to a member or a family member of the member*  
13        *(or information about a request for the receipt of genetic*  
14        *services by such member or a family member of such mem-*  
15        *ber) except—*

16                *(1) where a labor organization inadvertently re-*  
17        *quests or requires family medical history of the mem-*  
18        *ber or family member of the member;*

19                *(2) where—*

20                        *(A) health or genetic services are offered by*  
21        *the labor organization, including such services*  
22        *offered as part of a bona fide wellness program;*

23                        *(B) the member provides prior, knowing,*  
24        *voluntary, and written authorization;*

1           (C) only the member (or family member if  
2           the family member is receiving genetic services)  
3           and the licensed health care professional or board  
4           certified genetic counselor involved in providing  
5           such services receive individually identifiable in-  
6           formation concerning the results of such services;  
7           and

8           (D) any individually identifiable genetic  
9           information provided under subparagraph (C) in  
10          connection with the services provided under sub-  
11          paragraph (A) is only available for purposes of  
12          such services and shall not be disclosed to the  
13          labor organization except in aggregate terms that  
14          do not disclose the identity of specific members;

15          (3) where a labor organization requests or re-  
16          quires family medical history from the members to  
17          comply with the certification provisions of section 103  
18          of the Family and Medical Leave Act of 1993 (29  
19          U.S.C. 2613) or such requirements under State family  
20          and medical leave laws;

21          (4) where a labor organization purchases docu-  
22          ments that are commercially and publicly available  
23          (including newspapers, magazines, periodicals, and  
24          books, but not including medical databases or court  
25          records) that include family medical history; or

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

4           (A) *the labor organization provides written*  
5 *notice of the genetic monitoring to the member;*

6           (B)(i) *the member provides prior, knowing,*  
7 *voluntary, and written authorization; or*

8           (ii) *the genetic monitoring is required by*  
9 *Federal or State law;*

10          (C) *the member is informed of individual*  
11 *monitoring results;*

12          (D) *the monitoring is in compliance with—*

13           (i) *any Federal genetic monitoring reg-*  
14 *ulations, including any such regulations*  
15 *that may be promulgated by the Secretary*  
16 *of Labor pursuant to the Occupational*  
17 *Safety and Health Act of 1970 (29 U.S.C.*  
18 *651 et seq.), the Federal Mine Safety and*  
19 *Health Act of 1977 (30 U.S.C. 801 et seq.),*  
20 *or the Atomic Energy Act of 1954 (42*  
21 *U.S.C. 2011 et seq.); or*

22           (ii) *State genetic monitoring regula-*  
23 *tions, in the case of a State that is imple-*  
24 *menting genetic monitoring regulations*  
25 *under the authority of the Occupational*

1                   *Safety and Health Act of 1970 (29 U.S.C.*  
2                   *651 et seq.); and*

3                   *(E) the labor organization, excluding any*  
4                   *licensed health care professional or board cer-*  
5                   *tified genetic counselor that is involved in the ge-*  
6                   *netic monitoring program, receives the results of*  
7                   *the monitoring only in aggregate terms that do*  
8                   *not disclose the identity of specific members.*

9                   *(c) PRESERVATION OF PROTECTIONS.—In the case of*  
10                  *information to which any of paragraphs (1) through (5)*  
11                  *of subsection (b) applies, such information may not be used*  
12                  *in violation of paragraph (1) or (2) of subsection (a) or*  
13                  *treated or disclosed in a manner that violates section 206.*

14                  **SEC. 205. TRAINING PROGRAMS.**

15                  *(a) DISCRIMINATION BASED ON GENETIC INFORMA-*  
16                  *TION.—It shall be an unlawful employment practice for any*  
17                  *employer, labor organization, or joint labor-management*  
18                  *committee controlling apprenticeship or other training or*  
19                  *retraining, including on-the-job training programs—*

20                         *(1) to discriminate against any individual be-*  
21                         *cause of genetic information with respect to the indi-*  
22                         *vidual (or information about a request for or the re-*  
23                         *ceipt of genetic services by such individual or a fam-*  
24                         *ily member of such individual) in admission to, or*

1        *employment in, any program established to provide*  
2        *apprenticeship or other training or retraining;*

3            *(2) to limit, segregate, or classify the applicants*  
4        *for or participants in such apprenticeship or other*  
5        *training or retraining, or fail or refuse to refer for*  
6        *employment any individual, in any way that would*  
7        *deprive or tend to deprive any individual of employ-*  
8        *ment opportunities, or otherwise adversely affect the*  
9        *status of the individual as an employee, because of ge-*  
10       *netic information with respect to the individual (or*  
11       *information about a request for or receipt of genetic*  
12       *services by such individual or family member of such*  
13       *individual); or*

14           *(3) to cause or attempt to cause an employer to*  
15        *discriminate against an applicant for or a partici-*  
16        *part in such apprenticeship or other training or re-*  
17        *training in violation of this title.*

18        *(b) ACQUISITION OF GENETIC INFORMATION.—It shall*  
19        *be an unlawful employment practice for an employer, labor*  
20        *organization, or joint labor-management committee de-*  
21        *scribed in subsection (a) to request, require, or purchase ge-*  
22        *netic information with respect to an individual or a family*  
23        *member of the individual (or information about a request*  
24        *for the receipt of genetic services by such individual or a*  
25        *family member of such individual) except—*

1           (1) where the employer, labor organization, or  
2 joint labor-management committee inadvertently re-  
3 quests or requires family medical history of the indi-  
4 vidual or family member of the individual;

5           (2) where—

6           (A) health or genetic services are offered by  
7 the employer, labor organization, or joint labor-  
8 management committee, including such services  
9 offered as part of a bona fide wellness program;

10          (B) the individual provides prior, knowing,  
11 voluntary, and written authorization;

12          (C) only the individual (or family member  
13 if the family member is receiving genetic serv-  
14 ices) and the licensed health care professional or  
15 board certified genetic counselor involved in pro-  
16 viding such services receive individually identifi-  
17 able information concerning the results of such  
18 services; and

19          (D) any individually identifiable genetic  
20 information provided under subparagraph (C) in  
21 connection with the services provided under sub-  
22 paragraph (A) is only available for purposes of  
23 such services and shall not be disclosed to the em-  
24 ployer, labor organization, or joint labor-man-  
25 agement committee except in aggregate terms

1           *that do not disclose the identity of specific indi-*  
2           *viduals;*

3           (3) *where the employer, labor organization, or*  
4           *joint labor-management committee requests or re-*  
5           *quires family medical history from the individual to*  
6           *comply with the certification provisions of section 103*  
7           *of the Family and Medical Leave Act of 1993 (29*  
8           *U.S.C. 2613) or such requirements under State family*  
9           *and medical leave laws;*

10          (4) *where the employer, labor organization, or*  
11          *joint labor-management committee purchases docu-*  
12          *ments that are commercially and publicly available*  
13          *(including newspapers, magazines, periodicals, and*  
14          *books, but not including medical databases or court*  
15          *records) that include family medical history; or*

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

19                 (A) *the employer, labor organization, or*  
20                 *joint labor-management committee provides*  
21                 *written notice of the genetic monitoring to the*  
22                 *individual;*

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 reg-  
7                 ulations, 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 seq.),  
13                or the Atomic Energy Act of 1954 (42  
14                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 employer, labor organization, or  
22           joint labor-management committee, excluding  
23           any licensed health care professional or board  
24           certified genetic counselor that is involved in the  
25           genetic monitoring program, receives the results

1           of the monitoring only in aggregate terms that  
2           do not disclose the identity of specific individ-  
3           uals.

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

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

10          (a) *TREATMENT OF INFORMATION AS PART OF CON-*  
11 *FIDENTIAL MEDICAL RECORD.*—If an employer, employ-  
12 ment agency, labor organization, or joint labor-manage-  
13 ment committee possesses genetic information about an em-  
14 ployee or member (or information about a request for or  
15 receipt of genetic services by such employee or member or  
16 family member of such employee or member), such informa-  
17 tion shall be maintained on separate forms and in separate  
18 medical files and be treated as a confidential medical record  
19 of the employee or member. An employer, employment agen-  
20 cy, labor organization, or joint labor-management com-  
21 mittee shall be considered to be in compliance with the  
22 maintenance of information requirements of this subsection  
23 with respect to genetic information subject to this subsection  
24 that is maintained with and treated as a confidential med-

1 ical record under section 102(d)(3)(B) of the Americans  
2 With 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 (or information about  
7 a request for or receipt of genetic services by such employee  
8 or member or family member of such employee or member)  
9 except—

10 (1) to the employee or member of a labor organi-  
11 zation (or family member if the family member is re-  
12 ceiving the genetic services) at the written request of  
13 the employee or member of such organization;

14 (2) to an occupational or other health researcher  
15 if the research is conducted in compliance with the  
16 regulations and protections provided for under part  
17 46 of title 45, Code of Federal Regulations;

18 (3) in response to an order of a court, except  
19 that—

20 (A) the employer, employment agency, labor  
21 organization, or joint labor-management com-  
22 mittee may disclose only the genetic information  
23 expressly authorized by such order; and

24 (B) if the court order was secured without  
25 the knowledge of the employee or member to

1           whom the information refers, the employer, em-  
2           ployment agency, labor organization, or joint  
3           labor-management committee shall inform the  
4           employee or member of the court order and any  
5           genetic information that was disclosed pursuant  
6           to such order;

7           (4) to government officials who are investigating  
8           compliance with this title if the information is rel-  
9           evant to the investigation; or

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

16 **SEC. 207. REMEDIES AND ENFORCEMENT.**

17          (a) *EMPLOYEES COVERED BY TITLE VII OF THE CIVIL*  
18 *RIGHTS ACT OF 1964.*—

19           (1) *IN GENERAL.*—The powers, remedies, and  
20           procedures provided in sections 705, 706, 707, 709,  
21           710, and 711 of the Civil Rights Act of 1964 (42  
22           U.S.C. 2000e–4 et seq.) to the Commission, the Attor-  
23           ney General, or any person, alleging a violation of  
24           title VII of that Act (42 U.S.C. 2000e et seq.) shall  
25           be the powers, remedies, and procedures this title pro-

1 *vides to the Commission, the Attorney General, or*  
2 *any person, respectively, alleging an unlawful em-*  
3 *ployment practice in violation of this title against an*  
4 *employee described in section 201(2)(A)(i), except as*  
5 *provided in paragraphs (2) and (3).*

6 (2) *COSTS AND FEES.—The powers, remedies,*  
7 *and procedures provided in subsections (b) and (c) of*  
8 *section 722 of the Revised Statutes of the United*  
9 *States (42 U.S.C. 1988), shall be powers, remedies,*  
10 *and procedures this title provides to the Commission,*  
11 *the Attorney General, or any person, alleging such a*  
12 *practice.*

13 (3) *DAMAGES.—The powers, remedies, and pro-*  
14 *cedures provided in section 1977A of the Revised*  
15 *Statutes of the United States (42 U.S.C. 1981a), in-*  
16 *cluding the limitations contained in subsection (b)(3)*  
17 *of such section 1977A, shall be powers, remedies, and*  
18 *procedures this title provides to the Commission, the*  
19 *Attorney General, or any person, alleging such a*  
20 *practice (not an employment practice specifically ex-*  
21 *cluded from coverage under section 1977A(a)(1) of the*  
22 *Revised Statutes of the United States).*

23 (b) *EMPLOYEES COVERED BY GOVERNMENT EM-*  
24 *PLOYEE RIGHTS ACT OF 1991.—*

1           (1) *IN GENERAL.*—*The powers, remedies, and*  
2           *procedures provided in sections 302 and 304 of the*  
3           *Government Employee Rights Act of 1991 (42 U.S.C.*  
4           *2000e–16b, 2000e–16c) to the Commission, or any*  
5           *person, alleging a violation of section 302(a)(1) of*  
6           *that Act (42 U.S.C. 2000e–16b(a)(1)) shall be the*  
7           *powers, remedies, and procedures this title provides to*  
8           *the Commission, or any person, respectively, alleging*  
9           *an unlawful employment practice in violation of this*  
10           *title against an employee described in section*  
11           *201(2)(A)(ii), except as provided in paragraphs (2)*  
12           *and (3).*

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

19           (3) *DAMAGES.*—*The powers, remedies, and pro-*  
20           *cedures provided in section 1977A of the Revised*  
21           *Statutes of the United States (42 U.S.C. 1981a), in-*  
22           *cluding the limitations contained in subsection (b)(3)*  
23           *of such section 1977A, shall be powers, remedies, and*  
24           *procedures this title provides to the Commission, or*  
25           *any person, alleging such a practice (not an employ-*

1 *ment practice specifically excluded from coverage*  
2 *under section 1977A(a)(1) of the Revised Statutes of*  
3 *the United States).*

4 *(c) EMPLOYEES COVERED BY CONGRESSIONAL AC-*  
5 *COUNTABILITY ACT OF 1995.—*

6 *(1) IN GENERAL.—The powers, remedies, and*  
7 *procedures provided in the Congressional Account-*  
8 *ability Act of 1995 (2 U.S.C. 1301 et seq.) to the*  
9 *Board (as defined in section 101 of that Act (2 U.S.C.*  
10 *1301)), or any person, alleging a violation of section*  
11 *201(a)(1) of that Act (42 U.S.C. 1311(a)(1)) shall be*  
12 *the powers, remedies, and procedures this title pro-*  
13 *vides to that Board, or any person, alleging an un-*  
14 *lawful employment practice in violation of this title*  
15 *against an employee described in section*  
16 *201(2)(A)(iii), except as provided in paragraphs (2)*  
17 *and (3).*

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

24 *(3) DAMAGES.—The powers, remedies, and pro-*  
25 *cedures provided in section 1977A of the Revised*

1       *Statutes of the United States (42 U.S.C. 1981a), in-*  
2       *cluding the limitations contained in subsection (b)(3)*  
3       *of such section 1977A, shall be powers, remedies, and*  
4       *procedures this title provides to that Board, or any*  
5       *person, alleging such a practice (not an employment*  
6       *practice specifically excluded from coverage under sec-*  
7       *tion 1977A(a)(1) of the Revised Statutes of the United*  
8       *States).*

9               (4) *OTHER APPLICABLE PROVISIONS.—With re-*  
10       *spect to a claim alleging a practice described in para-*  
11       *graph (1), title III of the Congressional Account-*  
12       *ability Act of 1995 (2 U.S.C. 1381 et seq.) shall apply*  
13       *in the same manner as such title applies with respect*  
14       *to a claim alleging a violation of section 201(a)(1) of*  
15       *such Act (2 U.S.C. 1311(a)(1)).*

16       (d) *EMPLOYEES COVERED BY CHAPTER 5 OF TITLE*  
17       3, *UNITED STATES CODE.—*

18               (1) *IN GENERAL.—The powers, remedies, and*  
19       *procedures provided in chapter 5 of title 3, United*  
20       *States Code, to the President, the Commission, the*  
21       *Merit Systems Protection Board, or any person, alleg-*  
22       *ing a violation of section 411(a)(1) of that title, shall*  
23       *be the powers, remedies, and procedures this title pro-*  
24       *vides to the President, the Commission, such Board,*  
25       *or any person, respectively, alleging an unlawful em-*

1        *ployment practice in violation of this title against an*  
2        *employee described in section 201(2)(A)(iv), except as*  
3        *provided in paragraphs (2) and (3).*

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

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

21           (e) *EMPLOYEES COVERED BY SECTION 717 OF THE*  
22       *CIVIL RIGHTS ACT OF 1964.—*

23           (1) *IN GENERAL.—The powers, remedies, and*  
24       *procedures provided in section 717 of the Civil Rights*  
25       *Act of 1964 (42 U.S.C. 2000e–16) to the Commission,*

1     *the Attorney General, the Librarian of Congress, or*  
2     *any person, alleging a violation of that section shall*  
3     *be the powers, remedies, and procedures this title pro-*  
4     *vides to the Commission, the Attorney General, the*  
5     *Librarian of Congress, or any person, respectively, al-*  
6     *leging an unlawful employment practice in violation*  
7     *of this title against an employee or applicant de-*  
8     *scribed in section 201(2)(A)(v), except as provided in*  
9     *paragraphs (2) and (3).*

10           (2) *COSTS AND FEES.—The powers, remedies,*  
11           *and procedures provided in subsections (b) and (c) of*  
12           *section 722 of the Revised Statutes of the United*  
13           *States (42 U.S.C. 1988), shall be powers, remedies,*  
14           *and procedures this title provides to the Commission,*  
15           *the Attorney General, the Librarian of Congress, or*  
16           *any person, alleging such a practice.*

17           (3) *DAMAGES.—The powers, remedies, and pro-*  
18           *cedures provided in section 1977A of the Revised*  
19           *Statutes of the United States (42 U.S.C. 1981a), in-*  
20           *cluding the limitations contained in subsection (b)(3)*  
21           *of such section 1977A, shall be powers, remedies, and*  
22           *procedures this title provides to the Commission, the*  
23           *Attorney General, the Librarian of Congress, or any*  
24           *person, alleging such a practice (not an employment*  
25           *practice specifically excluded from coverage under sec-*

1        *tion 1977A(a)(1) of the Revised Statutes of the United*  
2        *States).*

3        (f) *DEFINITION.*—*In this section, the term “Commis-*  
4        *sion” means the Equal Employment Opportunity Commis-*  
5        *sion.*

6        **SEC. 208. DISPARATE IMPACT.**

7        (a) *GENERAL RULE.*—*Notwithstanding any other pro-*  
8        *vision of this Act, “disparate impact”, as that term is used*  
9        *in section 703(k) of the Civil Rights Act of 1964 (42 U.S.C.*  
10       *2000e–2(k)), on the basis of genetic information does not*  
11       *establish a cause of action under this Act.*

12       (b) *COMMISSION.*—*On the date that is 6 years after*  
13       *the date of enactment of this Act, there shall be established*  
14       *a commission, to be known as the Genetic Nondiscrimina-*  
15       *tion Study Commission (referred to in this section as the*  
16       *“Commission”) to review the developing science of genetics*  
17       *and to make recommendations to Congress regarding wheth-*  
18       *er to provide a disparate impact cause of action under this*  
19       *Act.*

20       (c) *MEMBERSHIP.*—

21                (1) *IN GENERAL.*—*The Commission shall be com-*  
22        *posed of 8 members, of which—*

23                        (A) *1 member shall be appointed by the Ma-*  
24        *jority Leader of the Senate;*

1           (B) 1 member shall be appointed by the Mi-  
2           nority Leader of the Senate;

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

6           (D) 1 member shall be appointed by the  
7           ranking minority member of the Committee on  
8           Health, Education, Labor, and Pensions of the  
9           Senate;

10          (E) 1 member shall be appointed by the  
11          Speaker of the House of Representatives;

12          (F) 1 member shall be appointed by the Mi-  
13          nority Leader of the House of Representatives;

14          (G) 1 member shall be appointed by the  
15          Chairman of the Committee on Education and  
16          Labor of the House of Representatives; and

17          (H) 1 member shall be appointed by the  
18          ranking minority member of the Committee on  
19          Education and Labor of the House of Represent-  
20          atives.

21          (2) COMPENSATION AND EXPENSES.—The mem-  
22          bers of the Commission shall not receive compensation  
23          for the performance of services for the Commission,  
24          but shall be allowed travel expenses, including per  
25          diem in lieu of subsistence, at rates authorized for

1        *employees of agencies under subchapter I of chapter*  
2        *57 of title 5, United States Code, while away from*  
3        *their homes or regular places of business in the per-*  
4        *formance of services for the Commission.*

5        *(d) ADMINISTRATIVE PROVISIONS.—*

6            *(1) LOCATION.—The Commission shall be located*  
7        *in a facility maintained by the Equal Employment*  
8        *Opportunity Commission.*

9            *(2) DETAIL OF GOVERNMENT EMPLOYEES.—Any*  
10        *Federal Government employee may be detailed to the*  
11        *Commission without reimbursement, and such detail*  
12        *shall be without interruption or loss of civil service*  
13        *status or privilege.*

14           *(3) INFORMATION FROM FEDERAL AGENCIES.—*  
15        *The Commission may secure directly from any Fed-*  
16        *eral department or agency such information as the*  
17        *Commission considers necessary to carry out the pro-*  
18        *visions of this section. Upon request of the Commis-*  
19        *sion, the head of such department or agency shall fur-*  
20        *nish such information to the Commission.*

21           *(4) HEARINGS.—The Commission may hold such*  
22        *hearings, sit and act at such times and places, take*  
23        *such testimony, and receive such evidence as the Com-*  
24        *mission considers advisable to carry out the objectives*

1       of this section, except that, to the extent possible, the  
2       Commission shall use existing data and research.

3               (5) *POSTAL SERVICES.*—The Commission may  
4       use the United States mails in the same manner and  
5       under the same conditions as other departments and  
6       agencies of the Federal Government.

7       (e) *REPORT.*—Not later than 1 year after all of the  
8       members are appointed to the Commission under subsection  
9       (c)(1), the Commission shall submit to Congress a report  
10      that summarizes the findings of the Commission and makes  
11      such recommendations for legislation as are consistent with  
12      this Act.

13       (f) *AUTHORIZATION OF APPROPRIATIONS.*—There are  
14      authorized to be appropriated to the Equal Employment  
15      Opportunity Commission such sums as may be necessary  
16      to carry out this section.

17      **SEC. 209. CONSTRUCTION.**

18       (a) *IN GENERAL.*—Nothing in this title shall be con-  
19      strued to—

20               (1) *limit the rights or protections of an indi-*  
21      *vidual under any other Federal or State statute that*  
22      *provides equal or greater protection to an individual*  
23      *than the rights or protections provided for under this*  
24      *title, including the protections of an individual under*  
25      *the Americans with Disabilities Act of 1990 (42*

1       *U.S.C. 12101 et seq.) (including coverage afforded to*  
2       *individuals under section 102 of such Act (42 U.S.C.*  
3       *12112)), or under the Rehabilitation Act of 1973 (29*  
4       *U.S.C. 701 et seq.);*

5               *(2)(A) limit the rights or protections of an indi-*  
6       *vidual to bring an action under this title against an*  
7       *employer, employment agency, labor organization, or*  
8       *joint labor-management committee for a violation of*  
9       *this title; or*

10              *(B) provide for enforcement of, or penalties for*  
11       *violation of, any requirement or prohibition applica-*  
12       *ble to any employer, employment agency, labor orga-*  
13       *nization, or joint labor-management committee the*  
14       *enforcement of which, or penalties for which, are pro-*  
15       *vided under the amendments made by title I;*

16              *(3) apply to the Armed Forces Repository of*  
17       *Specimen Samples for the Identification of Remains;*

18              *(4) limit or expand the protections, rights, or ob-*  
19       *ligations of employees or employers under applicable*  
20       *workers' compensation laws;*

21              *(5) limit the authority of a Federal department*  
22       *or agency to conduct or sponsor occupational or other*  
23       *health research that is conducted in compliance with*  
24       *the regulations contained in part 46 of title 45, Code*



1 *information about a manifested disease, disorder, or patho-*  
2 *logical condition of an employee or member, including a*  
3 *manifested disease, disorder, or pathological condition that*  
4 *has or may have a genetic basis.*

5 **SEC. 211. REGULATIONS.**

6 *Not later than 1 year after the date of enactment of*  
7 *this title, the Commission shall issue final regulations to*  
8 *carry out this title.*

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

10 *There are authorized to be appropriated such sums as*  
11 *may be necessary to carry out this title (except for section*  
12 *208).*

13 **SEC. 213. EFFECTIVE DATE.**

14 *This title takes effect on the date that is 18 months*  
15 *after the date of enactment of this Act.*

16 **TITLE III—MISCELLANEOUS**  
17 **PROVISION**

18 **SEC. 301. SEVERABILITY.**

19 *If any provision of this Act, an amendment made by*  
20 *this Act, or the application of such provision or amendment*  
21 *to any person or circumstance is held to be unconstitu-*  
22 *tional, the remainder of this Act, the amendments made by*  
23 *this Act, and the application of such provisions to any per-*  
24 *son or circumstance shall not be affected thereby.*

1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

5 (b) **TABLE OF CONTENTS.**—The table of con-  
 6 tents of 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 Secu-  
 rity 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.

Sec. 107. Regulations; effective date.

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 PROVISION

Sec. 301. Severability.

7 SEC. 2. FINDINGS.

8 Congress makes the following findings:

1           **(1) Deciphering the sequence of the**  
2           **human genome and other advances in ge-**  
3           **netics open major new opportunities for**  
4           **medical progress. New knowledge about**  
5           **the genetic basis of illness will allow for**  
6           **earlier detection of illnesses, often before**  
7           **symptoms have begun. Genetic testing**  
8           **can allow individuals to take steps to re-**  
9           **duce the likelihood that they will con-**  
10          **tract a particular disorder. New knowl-**  
11          **edge about genetics may allow for the de-**  
12          **velopment of better therapies that are**  
13          **more effective against disease or have**  
14          **fewer side effects than current treat-**  
15          **ments. These advances give rise to the**  
16          **potential misuse of genetic information**  
17          **to discriminate in health insurance and**  
18          **employment.**

19          **(2) The early science of genetics be-**  
20          **came the basis of State laws that pro-**  
21          **vided for the sterilization of persons hav-**  
22          **ing presumed genetic “defects” such as**  
23          **mental retardation, mental disease, epi-**  
24          **lepsy, blindness, and hearing loss, among**  
25          **other conditions. The first sterilization**

1 law was enacted in the State of Indiana  
2 in 1907. By 1981, a majority of States  
3 adopted sterilization laws to “correct” ap-  
4 parent genetic traits or tendencies. Many  
5 of these State laws have since been re-  
6 pealed, and many have been modified to  
7 include essential constitutional require-  
8 ments of due process and equal protec-  
9 tion. However, the current explosion in  
10 the science of genetics, and the history of  
11 sterilization laws by the States based on  
12 early genetic science, compels Congres-  
13 sional action in this area.

14 (3) Although genes are facially neu-  
15 tral markers, many genetic conditions  
16 and disorders are associated with par-  
17 ticular racial and ethnic groups and gen-  
18 der. Because some genetic traits are most  
19 prevalent in particular groups, members  
20 of a particular group may be stigmatized  
21 or discriminated against as a result of  
22 that genetic information. This form of  
23 discrimination was evident in the 1970s,  
24 which saw the advent of programs to  
25 screen and identify carriers of sickle cell

1        **anemia, a disease which afflicts African-**  
2        **Americans. Once again, State legislatures**  
3        **began to enact discriminatory laws in the**  
4        **area, and in the early 1970s began man-**  
5        **dating genetic screening of all African**  
6        **Americans for sickle cell anemia, leading**  
7        **to discrimination and unnecessary fear.**  
8        **To alleviate some of this stigma, Congress**  
9        **in 1972 passed the National Sickle Cell**  
10       **Anemia Control Act, which withholds**  
11       **Federal funding from States unless sickle**  
12       **cell testing is voluntary.**

13            (4) Congress has been informed of ex-  
14        **amples of genetic discrimination in the**  
15        **workplace. These include the use of pre-**  
16        **employment genetic screening at Law-**  
17        **rence Berkeley Laboratory, which led to**  
18        **a court decision in favor of the employees**  
19        **in that case Norman-Bloodsaw v. Law-**  
20        **rence Berkeley Laboratory (135 F.3d**  
21        **1260, 1269 (9th Cir. 1998)). Congress clear-**  
22        **ly has a compelling public interest in re-**  
23        **lieving the fear of discrimination and in**  
24        **prohibiting its actual practice in employ-**  
25        **ment and health insurance.**

1           **(5) Federal law addressing genetic**  
2           **discrimination in health insurance and**  
3           **employment is incomplete in both the**  
4           **scope and depth of its protections. More-**  
5           **over, while many States have enacted**  
6           **some type of genetic non-discrimination**  
7           **law, these laws vary widely with respect**  
8           **to their approach, application, and level**  
9           **of protection. Congress has collected sub-**  
10          **stantial evidence that the American pub-**  
11          **lic and the medical community find the**  
12          **existing patchwork of State and Federal**  
13          **laws to be confusing and inadequate to**  
14          **protect them from discrimination. There-**  
15          **fore Federal legislation establishing a na-**  
16          **tional and uniform basic standard is nec-**  
17          **essary to fully protect the public from**  
18          **discrimination and allay their concerns**  
19          **about the potential for discrimination,**  
20          **thereby allowing individuals to take ad-**  
21          **vantage of genetic testing, technologies,**  
22          **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) PROHIBITION OF HEALTH DISCRIMINA-**  
7 **TION ON THE BASIS OF GENETIC INFORMATION OR**  
8 **GENETIC SERVICES.—**

9 **(1) NO ENROLLMENT RESTRICTION FOR**  
10 **GENETIC SERVICES.—Section 702(a)(1)(F) of**  
11 **the Employee Retirement Income Secu-**  
12 **ry Act of 1974 (29 U.S.C. 1182(a)(1)(F)) is**  
13 **amended by inserting before the period**  
14 **the following: “(including information**  
15 **about a request for or receipt of genetic**  
16 **services by an individual or family mem-**  
17 **ber of such individual)”.**

18 **(2) NO DISCRIMINATION IN GROUP PRE-**  
19 **MIUMS BASED ON GENETIC INFORMATION.—**  
20 **Section 702(b) of the Employee Retire-**  
21 **ment Income Security Act of 1974 (29**  
22 **U.S.C. 1182(b)) is amended—**

23 **(A) in paragraph (2)(A), by insert-**  
24 **ing before the semicolon the fol-**

1           **lowing: “except as provided in para-**  
2           **graph (3)”;** and

3           **(B) by adding at the end the fol-**  
4           **lowing:**

5           **“(3) NO DISCRIMINATION IN GROUP PRE-**  
6           **MIUMS BASED ON GENETIC INFORMATION.—**  
7           **For purposes of this section, a group**  
8           **health plan, or a health insurance issuer**  
9           **offering group health insurance coverage**  
10           **in connection with a group health plan,**  
11           **shall not adjust premium or contribution**  
12           **amounts for a group on the basis of ge-**  
13           **netic information concerning an indi-**  
14           **vidual in the group or a family member**  
15           **of the individual (including information**  
16           **about a request for or receipt of genetic**  
17           **services by an individual or family mem-**  
18           **ber of such individual).”.**

19           **(b) LIMITATIONS ON GENETIC TESTING.—Sec-**  
20           **tion 702 of the Employee Retirement Income**  
21           **Security Act of 1974 (29 U.S.C. 1182) is amend-**  
22           **ed by adding at the end the following:**

23           **“(c) GENETIC TESTING.—**

24           **“(1) LIMITATION ON REQUESTING OR RE-**  
25           **QUIRING GENETIC TESTING.—A group health**

1        **plan, or a health insurance issuer offer-**  
2        **ing health insurance coverage in connec-**  
3        **tion with a group health plan, shall not**  
4        **request or require an individual or a fam-**  
5        **ily member of such individual to undergo**  
6        **a genetic test.**

7            **“(2) RULE OF CONSTRUCTION.—Nothing**  
8        **in this part shall be construed to—**

9            **“(A) limit the authority of a**  
10        **health care professional who is pro-**  
11        **viding health care services with re-**  
12        **spect to an individual to request that**  
13        **such individual or a family member**  
14        **of such individual undergo a genetic**  
15        **test;**

16            **“(B) limit the authority of a**  
17        **health care professional who is em-**  
18        **ployed by or affiliated with a group**  
19        **health plan or a health insurance**  
20        **issuer and who is providing health**  
21        **care services to an individual as part**  
22        **of a bona fide wellness program to**  
23        **notify such individual of the avail-**  
24        **ability of a genetic test or to provide**

1 information to such individual re-  
2 garding such genetic test; or

3 “(C) authorize or permit a health  
4 care professional to require that an  
5 individual undergo a genetic test.

6 “(d) APPLICATION TO ALL PLANS.—The pro-  
7 visions of subsections (a)(1)(F), (b)(3), and (c)  
8 shall apply to group health plans and health  
9 insurance issuers without regard to section  
10 732(a).”.

11 (c) REMEDIES AND ENFORCEMENT.—Section  
12 502 of the Employee Retirement Income Secu-  
13 rity Act of 1974 (29 U.S.C. 1132) is amended by  
14 adding at the end the following:

15 “(n) ENFORCEMENT OF GENETIC NON-  
16 DISCRIMINATION REQUIREMENTS.—

17 “(1) INJUNCTIVE RELIEF FOR IRREP-  
18 ARABLE HARM.—With respect to any viola-  
19 tion of subsection (a)(1)(F), (b)(3), or (c) of  
20 section 702, a participant or beneficiary  
21 may seek relief under subsection  
22 502(a)(1)(B) prior to the exhaustion of  
23 available administrative remedies under  
24 section 503 if it is demonstrated to the  
25 court, by a preponderance of the evi-

1        **dence, that the exhaustion of such rem-**  
2        **edies would cause irreparable harm to**  
3        **the health of the participant or bene-**  
4        **ficiary. Any determinations that already**  
5        **have been made under section 503 in**  
6        **such case, or that are made in such case**  
7        **while an action under this paragraph is**  
8        **pending, shall be given due consideration**  
9        **by the court in any action under this sub-**  
10       **section in such case.**

11            **“(2) EQUITABLE RELIEF FOR GENETIC**  
12        **NONDISCRIMINATION.—**

13            **“(A) REINSTATEMENT OF BENEFITS**  
14        **WHERE EQUITABLE RELIEF HAS BEEN**  
15        **AWARDED.—The recovery of benefits**  
16        **by a participant or beneficiary under**  
17        **a civil action under this section may**  
18        **include an administrative penalty**  
19        **under subparagraph (B) and the ret-**  
20        **roactive reinstatement of coverage**  
21        **under the plan involved to the date**  
22        **on which the participant or bene-**  
23        **ficiary was denied eligibility for cov-**  
24        **erage if—**

1           “(i) the civil action was com-  
2           menced under subsection  
3           (a)(1)(B); and

4           “(ii) the denial of coverage on  
5           which such civil action was based  
6           constitutes a violation of sub-  
7           section (a)(1)(F), (b)(3), or (c) of  
8           section 702.

9           “(B) ADMINISTRATIVE PENALTY.—

10           “(i) IN GENERAL.—An adminis-  
11           trator who fails to comply with  
12           the requirements of subsection  
13           (a)(1)(F), (b)(3), or (c) of section  
14           702 with respect to a participant  
15           or beneficiary may, in an action  
16           commenced under subsection  
17           (a)(1)(B), be personally liable in  
18           the discretion of the court, for a  
19           penalty in the amount not more  
20           than \$100 for each day in the non-  
21           compliance period.

22           “(ii) NONCOMPLIANCE PERIOD.—  
23           For purposes of clause (i), the  
24           term ‘noncompliance period’  
25           means the period—

1           **“(I) beginning on the date**  
2           **that a failure described in**  
3           **clause (i) occurs; and**

4           **“(II) ending on the date**  
5           **that such failure is corrected.**

6           **“(iii) PAYMENT TO PARTICIPANT**  
7           **OR BENEFICIARY.—A penalty col-**  
8           **lected under this subparagraph**  
9           **shall be paid to the participant or**  
10          **beneficiary involved.**

11          **“(3) SECRETARIAL ENFORCEMENT AU-**  
12          **THORITY.—**

13           **“(A) GENERAL RULE.—The Sec-**  
14           **retary has the authority to impose a**  
15           **penalty on any failure of a group**  
16           **health plan to meet the requirements**  
17           **of subsection (a)(1)(F), (b)(3), or (c) of**  
18           **section 702.**

19           **“(B) AMOUNT.—**

20           **“(i) IN GENERAL.—The amount**  
21           **of the penalty imposed by sub-**  
22           **paragraph (A) shall be \$100 for**  
23           **each day in the noncompliance**  
24           **period with respect to each indi-**

1           **vidual to whom such failure re-**  
2           **lates.**

3           **“(ii) NONCOMPLIANCE PERIOD.—**  
4           **For purposes of this paragraph,**  
5           **the term ‘noncompliance period’**  
6           **means, with respect to any fail-**  
7           **ure, the period—**

8                   **“(I) beginning on the date**  
9                   **such failure first occurs; and**

10                   **“(II) ending on the date**  
11                   **such failure is corrected.**

12           **“(C) MINIMUM PENALTIES WHERE**  
13           **FAILURE           DISCOVERED.—Notwith-**  
14           **standing clauses (i) and (ii) of sub-**  
15           **paragraph (D):**

16                   **“(i) IN GENERAL.—In the case**  
17                   **of 1 or more failures with respect**  
18                   **to an individual—**

19                           **“(I) which are not cor-**  
20                           **rected before the date on**  
21                           **which the plan receives a no-**  
22                           **tice from the Secretary of**  
23                           **such violation; and**

1                   **“(II) which occurred or**  
2                   **continued during the period**  
3                   **involved;**

4                   **the amount of penalty imposed by**  
5                   **subparagraph (A) by reason of**  
6                   **such failures with respect to such**  
7                   **individual shall not be less than**  
8                   **\$2,500.**

9                   **“(ii) HIGHER MINIMUM PENALTY**  
10                  **WHERE VIOLATIONS ARE MORE THAN**  
11                  **DE MINIMIS.—To the extent viola-**  
12                  **tions for which any person is lia-**  
13                  **ble under this paragraph for any**  
14                  **year are more than de minimis,**  
15                  **clause (i) shall be applied by sub-**  
16                  **stituting ‘\$15,000’ for ‘\$2,500’ with**  
17                  **respect to such person.**

18                  **“(D) LIMITATIONS.—**

19                  **“(i) PENALTY NOT TO APPLY**  
20                  **WHERE FAILURE NOT DISCOVERED**  
21                  **EXERCISING REASONABLE DILI-**  
22                  **GENCE.—No penalty shall be im-**  
23                  **posed by subparagraph (A) on any**  
24                  **failure during any period for**  
25                  **which it is established to the sat-**

1           **isfaction of the Secretary that the**  
2           **person otherwise liable for such**  
3           **penalty did not know, and exer-**  
4           **cising reasonable diligence would**  
5           **not have known, that such failure**  
6           **existed.**

7           **“(ii) PENALTY NOT TO APPLY TO**  
8           **FAILURES CORRECTED WITHIN CER-**  
9           **TAIN PERIODS.—No penalty shall be**  
10          **imposed by subparagraph (A) on**  
11          **any failure if—**

12               **“(I) such failure was due**  
13               **to reasonable cause and not**  
14               **to willful neglect; and**

15               **“(II) such failure is cor-**  
16               **rected during the 30-day pe-**  
17               **riod beginning on the first**  
18               **date the person otherwise lia-**  
19               **ble for such penalty knew, or**  
20               **exercising reasonable dili-**  
21               **gence would have known, that**  
22               **such failure existed.**

23           **“(iii) OVERALL LIMITATION FOR**  
24           **UNINTENTIONAL FAILURES.—In the**  
25           **case of failures which are due to**

1 reasonable cause and not to will-  
2 ful neglect, the penalty imposed  
3 by subparagraph (A) for failures  
4 shall not exceed the amount equal  
5 to the lesser of—

6 “(I) 10 percent of the ag-  
7 gregate amount paid or in-  
8 curred by the employer (or  
9 predecessor employer) during  
10 the preceding taxable year for  
11 group health plans; or

12 “(II) \$500,000.

13 “(E) WAIVER BY SECRETARY.—In the  
14 case of a failure which is due to rea-  
15 sonable cause and not to willful ne-  
16 glect, the Secretary may waive part  
17 or all of the penalty imposed by sub-  
18 paragraph (A) to the extent that the  
19 payment of such penalty would be ex-  
20 cessive relative to the failure in-  
21 volved.”.

22 (d) DEFINITIONS.—Section 733(d) of the  
23 Employee Retirement Income Security Act of  
24 1974 (29 U.S.C. 1191b(d)) is amended by add-  
25 ing at the end the following:

1           **“(5) FAMILY MEMBER.—The term ‘fam-**  
2 **ily member’ means with respect to an in-**  
3 **dividual—**

4           **“(A) the spouse of the individual;**

5           **“(B) a dependent child of the indi-**  
6 **vidual, including a child who is born**  
7 **to or placed for adoption with the in-**  
8 **dividual; and**

9           **“(C) all other individuals related**  
10 **by blood to the individual or the**  
11 **spouse or child described in subpara-**  
12 **graph (A) or (B).**

13           **“(6) GENETIC INFORMATION.—**

14           **“(A) IN GENERAL.—Except as pro-**  
15 **vided in subparagraph (B), the term**  
16 **‘genetic information’ means informa-**  
17 **tion about—**

18           **“(i) an individual’s genetic**  
19 **tests;**

20           **“(ii) the genetic tests of family**  
21 **members of the individual; or**

22           **“(iii) the occurrence of a dis-**  
23 **ease or disorder in family mem-**  
24 **bers of the individual.**

1           **“(B) EXCLUSIONS.—The term ‘ge-**  
2           **netic information’ shall not include**  
3           **information about the sex or age of**  
4           **an individual.**

5           **“(7) GENETIC TEST.—**

6           **“(A) IN GENERAL.—The term ‘ge-**  
7           **netic test’ means an analysis of**  
8           **human DNA, RNA, chromosomes, pro-**  
9           **teins, or metabolites, that detects**  
10           **genotypes, mutations, or chromo-**  
11           **somal changes.**

12           **“(B) EXCEPTIONS.—The term ‘ge-**  
13           **netic test’ does not mean—**

14                   **“(i) an analysis of proteins or**  
15                   **metabolites that does not detect**  
16                   **genotypes, mutations, or chromo-**  
17                   **somal changes; or**

18                   **“(ii) an analysis of proteins or**  
19                   **metabolites that is directly re-**  
20                   **lated to a manifested disease, dis-**  
21                   **order, or pathological condition**  
22                   **that could reasonably be detected**  
23                   **by a health care professional with**  
24                   **appropriate training and exper-**

1           **tise in the field of medicine in-**  
2           **volved.**

3           **“(8) GENETIC SERVICES.—The term ‘ge-**  
4           **netic services’ means—**

5                   **“(A) a genetic test;**

6                   **“(B) genetic counseling (such as**  
7                   **obtaining, interpreting, or assessing**  
8                   **genetic information); or**

9                   **“(C) genetic education.”.**

10          **(e) REGULATIONS AND EFFECTIVE DATE.—**

11               **(1) REGULATIONS.—Not later than 1**  
12               **year after the date of enactment of this**  
13               **title, the Secretary of Labor shall issue**  
14               **final regulations in an accessible format**  
15               **to carry out the amendments made by**  
16               **this section.**

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

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

3 **(a) AMENDMENTS RELATING TO THE GROUP**  
4 **MARKET.—**

5 **(1) PROHIBITION OF HEALTH DISCRIMINA-**  
6 **TION ON THE BASIS OF GENETIC INFORMA-**  
7 **TION OR GENETIC SERVICES.—**

8 **(A) NO ENROLLMENT RESTRICTION**  
9 **FOR GENETIC SERVICES.—Section**  
10 **2702(a)(1)(F) of the Public Health**  
11 **Service Act (42 U.S.C. 300gg-**  
12 **1(a)(1)(F)) is amended by inserting**  
13 **before the period the following: “(in-**  
14 **cluding information about a request**  
15 **for or receipt of genetic services by**  
16 **an individual or family member of**  
17 **such individual)”.**

18 **(B) NO DISCRIMINATION IN GROUP**  
19 **PREMIUMS BASED ON GENETIC INFORMA-**  
20 **TION.—Section 2702(b) of the Public**  
21 **Health Service Act (42 U.S.C. 300gg-**  
22 **1(b)) is amended—**

23 **(i) in paragraph (2)(A), by in-**  
24 **serting before the semicolon the**  
25 **following: “, except as provided in**  
26 **paragraph (3)”;** and

1                   (ii) by adding at the end the  
2                   following:

3                   **“(3) NO DISCRIMINATION IN GROUP PRE-**  
4                   **MIUMS BASED ON GENETIC INFORMATION.—**  
5                   **For purposes of this section, a group**  
6                   **health plan, or a health insurance issuer**  
7                   **offering group health insurance coverage**  
8                   **in connection with a group health plan,**  
9                   **shall not adjust premium or contribution**  
10                  **amounts for a group on the basis of ge-**  
11                  **netic information concerning an indi-**  
12                  **vidual in the group or a family member**  
13                  **of the individual (including information**  
14                  **about a request for or receipt of genetic**  
15                  **services by an individual or family mem-**  
16                  **ber of such individual).”.**

17                  **(2) LIMITATIONS ON GENETIC TESTING.—**  
18                  **Section 2702 of the Public Health Service**  
19                  **Act (42 U.S.C. 300gg-1) is amended by**  
20                  **adding at the end the following:**

21                  **“(c) GENETIC TESTING.—**

22                  **“(1) LIMITATION ON REQUESTING OR RE-**  
23                  **QUIRING GENETIC TESTING.—A group health**  
24                  **plan, or a health insurance issuer offer-**  
25                  **ing health insurance coverage in connec-**

1       **tion with a group health plan, shall not**  
2       **request or require an individual or a fam-**  
3       **ily member of such individual to undergo**  
4       **a genetic test.**

5           **“(2) RULE OF CONSTRUCTION.—Nothing**  
6       **in this part shall be construed to—**

7           **“(A) limit the authority of a**  
8       **health care professional who is pro-**  
9       **viding health care services with re-**  
10      **spect to an individual to request that**  
11      **such individual or a family member**  
12      **of such individual undergo a genetic**  
13      **test;**

14          **“(B) limit the authority of a**  
15      **health care professional who is em-**  
16      **ployed by or affiliated with a group**  
17      **health plan or a health insurance**  
18      **issuer and who is providing health**  
19      **care services to an individual as part**  
20      **of a bona fide wellness program to**  
21      **notify such individual of the avail-**  
22      **ability of a genetic test or to provide**  
23      **information to such individual re-**  
24      **garding such genetic test; or**

1           **“(C) authorize or permit a health**  
2           **care professional to require that an**  
3           **individual undergo a genetic test.**

4           **“(d) APPLICATION TO ALL PLANS.—The pro-**  
5           **visions of subsections (a)(1)(F), (b)(3), and (c)**  
6           **shall apply to group health plans and health**  
7           **insurance issuers without regard to section**  
8           **2721(a).”.**

9           **(3) REMEDIES AND ENFORCEMENT.—Sec-**  
10          **tion 2722(b) of the Public Health Service**  
11          **Act (42 U.S.C. 300gg-22(b)) is amended by**  
12          **adding at the end the following:**

13           **“(3) ENFORCEMENT AUTHORITY RELAT-**  
14           **ING TO GENETIC DISCRIMINATION.—**

15           **“(A) GENERAL RULE.—In the cases**  
16           **described in paragraph (1), notwith-**  
17           **standing the provisions of paragraph**  
18           **(2)(C), the following provisions shall**  
19           **apply with respect to an action under**  
20           **this subsection by the Secretary with**  
21           **respect to any failure of a health in-**  
22           **surance issuer in connection with a**  
23           **group health plan, to meet the re-**  
24           **quirements of subsection (a)(1)(F),**  
25           **(b)(3), or (c) of section 2702.**

1           **“(B) AMOUNT.—**

2                   **“(i) IN GENERAL.—The amount**  
3                   **of the penalty imposed under this**  
4                   **paragraph shall be \$100 for each**  
5                   **day in the noncompliance period**  
6                   **with respect to each individual to**  
7                   **whom such failure relates.**

8                   **“(ii) NONCOMPLIANCE PERIOD.—**  
9                   **For purposes of this paragraph,**  
10                   **the term ‘noncompliance period’**  
11                   **means, with respect to any fail-**  
12                   **ure, the period—**

13                           **“(I) beginning on the date**  
14                           **such failure first occurs; and**

15                           **“(II) ending on the date**  
16                           **such failure is corrected.**

17                   **“(C) MINIMUM PENALTIES WHERE**  
18                   **FAILURE           DISCOVERED.—Notwith-**  
19                   **standing clauses (i) and (ii) of sub-**  
20                   **paragraph (D):**

21                           **“(i) IN GENERAL.—In the case**  
22                           **of 1 or more failures with respect**  
23                           **to an individual—**

24                                   **“(I) which are not cor-**  
25                                   **rected before the date on**

1           **which the plan receives a no-**  
2           **tice from the Secretary of**  
3           **such violation; and**

4           **“(II) which occurred or**  
5           **continued during the period**  
6           **involved;**

7           **the amount of penalty imposed by**  
8           **subparagraph (A) by reason of**  
9           **such failures with respect to such**  
10          **individual shall not be less than**  
11          **\$2,500.**

12          **“(ii) HIGHER MINIMUM PENALTY**  
13          **WHERE VIOLATIONS ARE MORE THAN**  
14          **DE MINIMIS.—To the extent viola-**  
15          **tions for which any person is lia-**  
16          **ble under this paragraph for any**  
17          **year are more than de minimis,**  
18          **clause (i) shall be applied by sub-**  
19          **stituting ‘\$15,000’ for ‘\$2,500’ with**  
20          **respect to such person.**

21          **“(D) LIMITATIONS.—**

22          **“(i) PENALTY NOT TO APPLY**  
23          **WHERE FAILURE NOT DISCOVERED**  
24          **EXERCISING REASONABLE DILI-**  
25          **GENCE.—No penalty shall be im-**

1           posed by subparagraph (A) on any  
2           failure during any period for  
3           which it is established to the sat-  
4           isfaction of the Secretary that the  
5           person otherwise liable for such  
6           penalty did not know, and exer-  
7           cising reasonable diligence would  
8           not have known, that such failure  
9           existed.

10           “(ii) PENALTY NOT TO APPLY TO  
11           FAILURES CORRECTED WITHIN CER-  
12           TAIN PERIODS.—No penalty shall be  
13           imposed by subparagraph (A) on  
14           any failure if—

15                   “(I) such failure was due  
16                   to reasonable cause and not  
17                   to willful neglect; and

18                   “(II) such failure is cor-  
19                   rected during the 30-day pe-  
20                   riod beginning on the first  
21                   date the person otherwise lia-  
22                   ble for such penalty knew, or  
23                   exercising reasonable dili-  
24                   gence would have known, that  
25                   such failure existed.

1           **“(iii) OVERALL LIMITATION FOR**  
2           **UNINTENTIONAL FAILURES.—In the**  
3           **case of failures which are due to**  
4           **reasonable cause and not to will-**  
5           **ful neglect, the penalty imposed**  
6           **by subparagraph (A) for failures**  
7           **shall not exceed the amount equal**  
8           **to the lesser of—**

9                   **“(I) 10 percent of the ag-**  
10                   **gregate amount paid or in-**  
11                   **curring by the employer (or**  
12                   **predecessor employer) during**  
13                   **the preceding taxable year for**  
14                   **group health plans; or**

15                   **“(II) \$500,000.**

16           **“(E) WAIVER BY SECRETARY.—In the**  
17           **case of a failure which is due to rea-**  
18           **sonable cause and not to willful ne-**  
19           **glect, the Secretary may waive part**  
20           **or all of the penalty imposed by sub-**  
21           **paragraph (A) to the extent that the**  
22           **payment of such penalty would be ex-**  
23           **cessive relative to the failure in-**  
24           **volved.”.**

1           **(4) DEFINITIONS.—Section 2791(d) of**  
2           **the Public Health Service Act (42 U.S.C.**  
3           **300gg-91(d)) is amended by adding at the**  
4           **end the following:**

5           **“(15) FAMILY MEMBER.—The term ‘fam-**  
6           **ily member’ means with respect to an in-**  
7           **dividual—**

8                   **“(A) the spouse of the individual;**

9                   **“(B) a dependent child of the indi-**  
10                   **vidual, including a child who is born**  
11                   **to or placed for adoption with the in-**  
12                   **dividual; and**

13                   **“(C) all other individuals related**  
14                   **by blood to the individual or the**  
15                   **spouse or child described in subpara-**  
16                   **graph (A) or (B).**

17           **“(16) GENETIC INFORMATION.—**

18                   **“(A) IN GENERAL.—Except as pro-**  
19                   **vided in subparagraph (B), the term**  
20                   **‘genetic information’ means informa-**  
21                   **tion about—**

22                           **“(i) an individual’s genetic**  
23                           **tests;**

24                           **“(ii) the genetic tests of family**  
25                           **members of the individual; or**

1           “(iii) the occurrence of a dis-  
2           ease or disorder in family mem-  
3           bers of the individual.

4           “(B) EXCLUSIONS.—The term ‘ge-  
5           netic information’ shall not include  
6           information about the sex or age of  
7           an individual.

8           “(17) GENETIC TEST.—

9           “(A) IN GENERAL.—The term ‘ge-  
10          netic test’ means an analysis of  
11          human DNA, RNA, chromosomes, pro-  
12          teins, or metabolites, that detects  
13          genotypes, mutations, or chromo-  
14          somal changes.

15          “(B) EXCEPTIONS.—The term ‘ge-  
16          netic test’ does not mean—

17                 “(i) an analysis of proteins or  
18                 metabolites that does not detect  
19                 genotypes, mutations, or chromo-  
20                 somal changes; or

21                 “(ii) an analysis of proteins or  
22                 metabolites that is directly re-  
23                 lated to a manifested disease, dis-  
24                 order, or pathological condition  
25                 that could reasonably be detected

1           by a health care professional with  
2           appropriate training and exper-  
3           tise in the field of medicine in-  
4           volved.

5           “(18) GENETIC SERVICES.—The term  
6           ‘genetic services’ means—

7                   “(A) a genetic test;

8                   “(B) genetic counseling (such as  
9                   obtaining, interpreting, or assessing  
10                  genetic information); or

11                  “(C) genetic education.”.

12           (b) AMENDMENT RELATING TO THE INDI-  
13           VIDUAL MARKET.—

14                   (1) IN GENERAL.—The first subpart 3 of  
15                   part B of title XXVII of the Public Health  
16                   Service Act (42 U.S.C. 300gg-51 et seq.)  
17                   (relating to other requirements) is  
18                   amended—

19                           (A) by redesignating such subpart  
20                           as subpart 2; and

21                           (B) by adding at the end the fol-  
22                           lowing:

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

3 “(a) PROHIBITION ON GENETIC INFORMATION  
4 AS A CONDITION OF ELIGIBILITY.—A health in-  
5 surance issuer offering health insurance cov-  
6 erage in the individual market may not estab-  
7 lish rules for the eligibility (including contin-  
8 ued eligibility) of any individual to enroll in  
9 individual health insurance coverage based  
10 on genetic information (including informa-  
11 tion about a request for or receipt of genetic  
12 services by an individual or family member of  
13 such individual).

14 “(b) PROHIBITION ON GENETIC INFORMATION  
15 IN SETTING PREMIUM RATES.—A health insur-  
16 ance issuer offering health insurance cov-  
17 erage in the individual market shall not ad-  
18 just premium or contribution amounts for an  
19 individual on the basis of genetic information  
20 concerning the individual or a family member  
21 of the individual (including information  
22 about a request for or receipt of genetic serv-  
23 ices by an individual or family member of  
24 such individual).

25 “(c) GENETIC TESTING.—

1           **“(1) LIMITATION ON REQUESTING OR RE-**  
2           **QUIRING GENETIC TESTING.—A health insur-**  
3           **ance issuer offering health insurance cov-**  
4           **erage in the individual market shall not**  
5           **request or require an individual or a fam-**  
6           **ily member of such individual to undergo**  
7           **a genetic test.**

8           **“(2) RULE OF CONSTRUCTION.—Nothing**  
9           **in this part shall be construed to—**

10           **“(A) limit the authority of a**  
11           **health care professional who is pro-**  
12           **viding health care services with re-**  
13           **spect to an individual to request that**  
14           **such individual or a family member**  
15           **of such individual undergo a genetic**  
16           **test;**

17           **“(B) limit the authority of a**  
18           **health care professional who is em-**  
19           **ployed by or affiliated with a health**  
20           **insurance issuer and who is pro-**  
21           **viding health care services to an indi-**  
22           **vidual as part of a bona fide wellness**  
23           **program to notify such individual of**  
24           **the availability of a genetic test or to**

1 provide information to such indi-  
2 vidual regarding such genetic test; or

3 “(C) authorize or permit a health  
4 care professional to require that an  
5 individual undergo a genetic test.”.

6 (2) REMEDIES AND ENFORCEMENT.—Sec-  
7 tion 2761(b) of the Public Health Service  
8 Act (42 U.S.C. 300gg-61(b)) is amended to  
9 read as follows:

10 “(b) SECRETARIAL ENFORCEMENT AUTHOR-  
11 ITY.—The Secretary shall have the same au-  
12 thority in relation to enforcement of the pro-  
13 visions of this part with respect to issuers of  
14 health insurance coverage in the individual  
15 market in a State as the Secretary has under  
16 section 2722(b)(2), and section 2722(b)(3) with  
17 respect to violations of genetic non-  
18 discrimination provisions, in relation to the  
19 enforcement of the provisions of part A with  
20 respect to issuers of health insurance cov-  
21 erage in the small group market in the State.”.

22 (c) ELIMINATION OF OPTION OF NON-FED-  
23 ERAL GOVERNMENTAL PLANS TO BE EXCEPTED  
24 FROM REQUIREMENTS CONCERNING GENETIC IN-  
25 FORMATION.—Section 2721(b)(2) of the Public

1 **Health Service Act (42 U.S.C. 300gg-21(b)(2))**  
2 **is amended—**

3           **(1) in subparagraph (A), by striking**  
4           **“If the plan sponsor” and inserting “Ex-**  
5           **cept as provided in subparagraph (D), if**  
6           **the plan sponsor”; and**

7           **(2) by adding at the end the fol-**  
8           **lowing:**

9                   **“(D) ELECTION NOT APPLICABLE TO**  
10                   **REQUIREMENTS CONCERNING GENETIC**  
11                   **INFORMATION.—The election described**  
12                   **in subparagraph (A) shall not be**  
13                   **available with respect to the provi-**  
14                   **sions of subsections (a)(1)(F) and (c)**  
15                   **of section 2702 and the provisions of**  
16                   **section 2702(b) to the extent that**  
17                   **such provisions apply to genetic in-**  
18                   **formation (or information about a re-**  
19                   **quest for or the receipt of genetic**  
20                   **services by an individual or a family**  
21                   **member of such individual).”.**

22           **(d) REGULATIONS AND EFFECTIVE DATE.—**

23                   **(1) REGULATIONS.—Not later than 1**  
24                   **year after the date of enactment of this**  
25                   **title, the Secretary of Labor and the Sec-**



1           (1) in paragraph (2)(A), by inserting  
2 before the semicolon the following: “ex-  
3 cept as provided in paragraph (3)”; and

4           (2) by adding at the end the fol-  
5 lowing:

6           “(3) NO GROUP-BASED DISCRIMINATION  
7 ON BASIS OF GENETIC INFORMATION.—For  
8 purposes of this section, a group health  
9 plan may not adjust premium or con-  
10 tribution amounts for the group covered  
11 under such plan on the basis of genetic  
12 information.”.

13           (b) LIMITATIONS ON GENETIC TESTING AND  
14 COLLECTION OF GENETIC INFORMATION.—Sec-  
15 tion 9802 of such Code is amended by redesi-  
16 gnating subsection (c) as subsection (f) and by  
17 inserting after subsection (b) the following  
18 new subsections:

19           “(c) GENETIC TESTING.—

20           “(1) LIMITATION ON REQUESTING OR RE-  
21 QUIRING GENETIC TESTING.—A group health  
22 plan may not request or require an indi-  
23 vidual or a family member of such indi-  
24 vidual to undergo a genetic test.

1           **“(2) EXCEPTION FOR HEALTH CARE PRO-**  
2           **FSSIONALS.—Paragraph (1) shall not be**  
3           **construed to limit the authority of a**  
4           **health care professional who is providing**  
5           **health care services to an individual to**  
6           **request that such individual undergo a**  
7           **genetic test.**

8           **“(3) PROVISION OF INFORMATION NOT**  
9           **PROHIBITED.—Paragraph (1) shall not be**  
10          **construed to limit the authority of a**  
11          **group health plan—**

12               **“(A) to provide information gen-**  
13               **erally about the availability of ge-**  
14               **netic tests, or**

15               **“(B) to provide information about**  
16               **genetic tests to a health care profes-**  
17               **sional with respect to the treatment**  
18               **of an individual to whom such profes-**  
19               **sional is providing health care serv-**  
20               **ices.**

21          **“(d) PROHIBITION ON COLLECTION OF GE-**  
22          **NETIC INFORMATION.—**

23               **“(1) IN GENERAL.—A group health plan**  
24               **shall not request, require, or purchase**

1 **genetic information for purposes of un-**  
2 **derwriting (as defined in section 9832).**

3 **“(2) PROHIBITION ON COLLECTION OF GE-**  
4 **NETIC INFORMATION PRIOR TO ENROLL-**  
5 **MENT.—A group health plan shall not re-**  
6 **quest, require, or purchase genetic infor-**  
7 **mation with respect to any individual**  
8 **prior to such individual’s enrollment**  
9 **under the plan or in connection with**  
10 **such enrollment.**

11 **“(3) INCIDENTAL COLLECTION.—If a**  
12 **group health plan obtains genetic infor-**  
13 **mation incidental to the requesting, re-**  
14 **quiring, or purchasing of other informa-**  
15 **tion concerning any individual, such re-**  
16 **quest, requirement, or purchase shall not**  
17 **be considered a violation of paragraph**  
18 **(2) if such request, requirement, or pur-**  
19 **chase is not in violation of paragraph (1).**

20 **“(e) APPLICATION TO ALL PLANS.—The pro-**  
21 **visions of subsections (a)(1)(F), (b)(3), (c), and**  
22 **(d) shall apply to group health plans without**  
23 **regard to section 9831(a).”**

1       **(c) DEFINITIONS.—**Subsection (d) of section  
2 **9832** of such Code is amended by adding at  
3 **the end the following:**

4           **“(6) FAMILY MEMBER.—**The term ‘fam-  
5 **ily member’** means, with respect to any  
6 **individual—**

7           **“(A) a dependent** (as such term is  
8 **used for purposes of section**  
9 **9801(f)(2)) of such individual, and**

10           **“(B) any other individual who is a**  
11 **first-degree, second-degree, third-de-**  
12 **gree, or fourth-degree relative of such**  
13 **individual or of an individual de-**  
14 **scribed in subparagraph (A).**

15           **“(7) GENETIC INFORMATION.—**

16           **“(A) IN GENERAL.—**The term ‘ge-  
17 **netic information’** means, with re-  
18 **spect to any individual, information**  
19 **about—**

20           **“(i) such individual’s genetic**  
21 **tests,**

22           **“(ii) the genetic tests of family**  
23 **members of such individual, and**

1           “(iii) the occurrence of a dis-  
2           ease or disorder in family mem-  
3           bers of such individual.

4           “(B) INCLUSION OF GENETIC SERV-  
5           ICES AND PARTICIPATION IN GENETIC RE-  
6           SEARCH.—Such term includes, with re-  
7           spect to any individual, any request  
8           for genetic services, receipt of genetic  
9           services, or participation in any clin-  
10          ical research, or any other program,  
11          which includes genetic services, by  
12          such individual or any family mem-  
13          ber of such individual.

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

18          “(D) APPLICATION TO FAMILY MEM-  
19          BERS COVERED UNDER SAME PLAN.—In-  
20          formation described in clause (iii) of  
21          subparagraph (A) shall not be treated  
22          as genetic information to the extent  
23          that such information is taken into  
24          account only with respect to the indi-  
25          vidual in which such disease or dis-

1           **order occurs and not as genetic infor-**  
2           **mation with respect to any other in-**  
3           **dividual.**

4           **“(8) GENETIC TEST.—**

5                   **“(A) IN GENERAL.—The term ‘ge-**  
6                   **netic test’ means an analysis of**  
7                   **human DNA, RNA, chromosomes, pro-**  
8                   **teins, or metabolites, that detects**  
9                   **genotypes, mutations, or chromo-**  
10                  **somal changes.**

11                  **“(B) EXCEPTIONS.—The term ‘ge-**  
12                  **netic test’ does not mean—**

13                          **“(i) an analysis of proteins or**  
14                          **metabolites that does not detect**  
15                          **genotypes, mutations, or chromo-**  
16                          **somal changes, or**

17                          **“(ii) an analysis of proteins or**  
18                          **metabolites that is directly re-**  
19                          **lated to a manifested disease, dis-**  
20                          **order, or pathological condition**  
21                          **that could reasonably be detected**  
22                          **by a health care professional with**  
23                          **appropriate training and exper-**  
24                          **tise in the field of medicine in-**  
25                          **volved.**

1           **“(9) GENETIC SERVICES.—The term ‘ge-**  
2           **netic services’ means—**

3                   **“(A) a genetic test,**

4                   **“(B) genetic counseling (such as**  
5                   **obtaining, interpreting, or assessing**  
6                   **genetic information), and**

7                   **“(C) genetic education.**

8           **“(10) UNDERWRITING.—The term ‘un-**  
9           **derwriting’ means, with respect to any**  
10           **group health plan—**

11                   **“(A) rules for eligibility (including**  
12                   **enrollment and continued eligibility)**  
13                   **for, or determination of, benefits**  
14                   **under the plan,**

15                   **“(B) the computation of premium**  
16                   **or contribution amounts under the**  
17                   **plan,**

18                   **“(C) the application of any pre-ex-**  
19                   **isting condition exclusion under the**  
20                   **plan, and**

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

25           **(d) ENFORCEMENT.—**

1           **(1) IN GENERAL.—**Subchapter C of  
2           **chapter 100 of the Internal Revenue Code**  
3           **of 1986 (relating to general provisions) is**  
4           **amended by adding at the end the fol-**  
5           **lowing new section:**

6           **“SEC. 9834. ENFORCEMENT.**

7           **“For the imposition of tax on any failure**  
8           **of a group health plan to meet the require-**  
9           **ments of this chapter, see section 4980D.”.**

10           **(2) CONFORMING AMENDMENT.—**The  
11           **table of sections for subchapter C of**  
12           **chapter 100 of such Code is amended by**  
13           **adding at the end the following new item:**

**“Sec. 9834. Enforcement.”.**

14           **(e) REGULATIONS AND EFFECTIVE DATE.—**

15           **(1) REGULATIONS.—**The Secretary of  
16           **the Treasury shall issue regulations or**  
17           **other guidance not later than 1 year after**  
18           **the date of the enactment of this Act to**  
19           **carry out the amendments made by this**  
20           **section.**

21           **(2) EFFECTIVE DATE.—**The amendments  
22           **made by this section shall apply with re-**  
23           **spect to group health plans for plan years**  
24           **beginning after the date that is 18**



1       **“(x) LIMITATIONS ON GENETIC TESTING AND**  
2 **COLLECTION OF GENETIC INFORMATION.—**

3               **“(1) GENETIC TESTING.—**

4                       **“(A) LIMITATION ON REQUESTING OR**  
5 **REQUIRING GENETIC TESTING.—An**  
6 **issuer of a medicare supplemental**  
7 **policy shall not request or require an**  
8 **individual or a family member of**  
9 **such individual to undergo a genetic**  
10 **test.**

11                      **“(B) EXCEPTION FOR HEALTH CARE**  
12 **PROFESSIONALS.—Subparagraph (A)**  
13 **shall not be construed to limit the au-**  
14 **thority of a health care professional**  
15 **who is providing health care services**  
16 **to an individual to request that such**  
17 **individual undergo a genetic test.**

18                      **“(C) PROVISION OF INFORMATION**  
19 **NOT PROHIBITED.—Subparagraph (A)**  
20 **shall not be construed to limit the au-**  
21 **thority of an issuer of a medicare**  
22 **supplemental policy—**

23                               **“(i) to provide information**  
24 **generally about the availability of**  
25 **genetic tests, or**

1           “(ii) to provide information  
2           about genetic tests to a health  
3           care professional with respect to  
4           the treatment of an individual to  
5           whom such professional is pro-  
6           viding health care services.

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

9           “(A) IN GENERAL.—An issuer of a  
10          medicare supplemental policy shall  
11          not request, require, or purchase ge-  
12          netic information for purposes of un-  
13          derwriting.

14          “(B) LIMITATION RELATING TO THE  
15          COLLECTION OF GENETIC INFORMATION  
16          PRIOR TO ENROLLMENT.—An issuer of a  
17          medicare supplemental policy shall  
18          not request, require, or purchase ge-  
19          netic information concerning any in-  
20          dividual prior to such individual’s en-  
21          rollment under the policy or in con-  
22          nection with such enrollment.

23          “(C) INCIDENTAL COLLECTION.—  
24          Where an issuer of a medicare supple-  
25          mental policy obtains genetic infor-

1           mation incidental to the requesting,  
2           requiring, or purchasing of other in-  
3           formation concerning an enrollee,  
4           such request, requirement, or pur-  
5           chase shall not be considered a viola-  
6           tion of this paragraph if such request,  
7           requirement, or purchase is not in  
8           violation of subparagraph (A).

9           “(3) DEFINITIONS.—In this subsection  
10          and subsection (s)(2)(E):

11           “(A) FAMILY MEMBER.—The term  
12           ‘family member’ means, with respect  
13           to any individual, any individual who  
14           is a first-degree, second-degree, third-  
15           degree, or fourth-degree relative of  
16           such individual.

17           “(B) GENETIC INFORMATION.—

18           “(i) IN GENERAL.—The term ‘ge-  
19           netic information’ means, with re-  
20           spect to any individual, informa-  
21           tion about—

22                   “(I) such individual’s ge-  
23                   netic tests;

1           **“(II) the genetic tests of**  
2           **family members of such indi-**  
3           **vidual; and**

4           **“(III) the occurrence of a**  
5           **disease or disorder in family**  
6           **members of such individual.**

7           **“(ii) INCLUSION OF GENETIC**  
8           **SERVICES AND PARTICIPATION IN GE-**  
9           **NETIC RESEARCH.—Such term in-**  
10          **cludes, with respect to any indi-**  
11          **vidual, any request for genetic**  
12          **services, receipt of genetic serv-**  
13          **ices, or participation in any clin-**  
14          **ical research, or any other pro-**  
15          **gram, which includes genetic**  
16          **services, by such individual or**  
17          **any family member of such indi-**  
18          **vidual.**

19          **“(iii) EXCLUSIONS.—The term**  
20          **‘genetic information’ shall not in-**  
21          **clude information about the sex**  
22          **or age of an individual.**

23          **“(C) GENETIC TEST.—**

24          **“(i) IN GENERAL.—The term ‘ge-**  
25          **netic test’ means an analysis of**

1 human DNA, RNA, chromosomes,  
2 proteins, or metabolites, that de-  
3 tects genotypes, mutations, or  
4 chromosomal changes.

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

7 “(I) an analysis of proteins  
8 or metabolites that does not  
9 detect genotypes, mutations,  
10 or chromosomal changes; or

11 “(II) an analysis of pro-  
12 teins or metabolites that is di-  
13 rectly related to a manifested  
14 disease, disorder, or patholog-  
15 ical condition that could rea-  
16 sonably be detected by a  
17 health care professional with  
18 appropriate training and ex-  
19 pertise in the field of medi-  
20 cine involved.

21 “(D) GENETIC SERVICES.—The term  
22 ‘genetic services’ means—

23 “(i) a genetic test;

1           “(ii) genetic counseling (such  
2           as obtaining, interpreting, or as-  
3           sessing genetic information); and

4           “(iii) genetic education.

5           “(E) UNDERWRITING.—The term  
6           ‘underwriting’ means, with respect to  
7           a medicare supplemental policy—

8           “(i) rules for eligibility (in-  
9           cluding enrollment and continued  
10          eligibility) for, or determination  
11          of, benefits under the policy;

12          “(ii) the computation of pre-  
13          mium or contribution amounts  
14          under the policy;

15          “(iii) the application of any  
16          pre-existing condition exclusion  
17          under the policy; and

18          “(iv) other activities related to  
19          the creation, renewal, or replace-  
20          ment of a contract of health in-  
21          surance or health benefits.

22          “(F) ISSUER OF A MEDICARE SUPPLE-  
23          MENTAL POLICY.—The term ‘issuer of a  
24          medicare supplemental policy’ in-  
25          cludes a third-party administrator or

1           **other person acting for or on behalf**  
2           **of such issuer.”.**

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

7           **“(4) The issuer of the medicare sup-**  
8           **plemental policy (as defined in sub-**  
9           **section (x)) complies with subsection**  
10           **(s)(2)(E) and subsection (x).”.**

11           **(c) EFFECTIVE DATE.—The amendments**  
12           **made by this section shall apply with respect**  
13           **to an issuer of a medicare supplemental pol-**  
14           **icy for policy years beginning on or after the**  
15           **date that is 18 months after the date of enact-**  
16           **ment of this Act.**

17           **(d) TRANSITION PROVISIONS.—**

18           **(1) IN GENERAL.—If the Secretary of**  
19           **Health and Human Services identifies a**  
20           **State as requiring a change to its statutes**  
21           **or regulations to conform its regulatory**  
22           **program to the changes made by this sec-**  
23           **tion, the State regulatory program shall**  
24           **not be considered to be out of compliance**  
25           **with the requirements of section 1882 of**

1 the Social Security Act due solely to fail-  
2 ure to make such change until the date  
3 specified in paragraph (4).

4 (2) NAIC STANDARDS.—If, not later  
5 than June 30, 2008, the National Associa-  
6 tion of Insurance Commissioners (in this  
7 subsection referred to as the “NAIC”)  
8 modifies its NAIC Model Regulation relat-  
9 ing to section 1882 of the Social Security  
10 Act (referred to in such section as the  
11 1991 NAIC Model Regulation, as subse-  
12 quently modified) to conform to the  
13 amendments made by this section, such  
14 revised regulation incorporating the  
15 modifications shall be considered to be  
16 the applicable NAIC model regulation (in-  
17 cluding the revised NAIC model regula-  
18 tion and the 1991 NAIC Model Regula-  
19 tion) for the purposes of such section.

20 (3) SECRETARY STANDARDS.—If the  
21 NAIC does not make the modifications  
22 described in paragraph (2) within the pe-  
23 riod specified in such paragraph, the Sec-  
24 retary of Health and Human Services  
25 shall, not later than October 1, 2008,

1       **make the modifications described in such**  
2       **paragraph and such revised regulation**  
3       **incorporating the modifications shall be**  
4       **considered to be the appropriate regula-**  
5       **tion for the purposes of such section.**

6               **(4) DATE SPECIFIED.—**

7                       **(A) IN GENERAL.—Subject to sub-**  
8                       **paragraph (B), the date specified in**  
9                       **this paragraph for a State is the ear-**  
10                      **lier of—**

11                               **(i) the date the State changes**  
12                               **its statutes or regulations to con-**  
13                               **form its regulatory program to**  
14                               **the changes made by this section,**  
15                               **or**

16                               **(ii) October 1, 2008.**

17                               **(B) ADDITIONAL LEGISLATIVE AC-**  
18                               **TION REQUIRED.—In the case of a State**  
19                               **which the Secretary identifies as—**

20                                       **(i) requiring State legislation**  
21                                       **(other than legislation appro-**  
22                                       **propriating funds) to conform its reg-**  
23                                       **ulatory program to the changes**  
24                                       **made in this section, but**

1           (ii) having a legislature which  
2           is not scheduled to meet in 2008  
3           in a legislative session in which  
4           such legislation may be consid-  
5           ered, the date specified in this  
6           paragraph is the first day of the  
7           first calendar quarter beginning  
8           after the close of the first legisla-  
9           tive session of the State legisla-  
10          ture that begins on or after July  
11          1, 2008. For purposes of the pre-  
12          vious sentence, in the case of a  
13          State that has a 2-year legislative  
14          session, each year of such session  
15          shall be deemed to be a separate  
16          regular session of the State legis-  
17          lature.

18 **SEC. 105. PRIVACY AND CONFIDENTIALITY.**

19           **Part C of title XI of the Social Security Act**  
20 **is amended by adding at the end the following**  
21 **new section:**

22           **“APPLICATION OF HIPAA REGULATIONS TO**  
23                           **GENETIC INFORMATION**

24           **“SEC. 1180. (a) IN GENERAL.—The Secretary**  
25 **of Health and Human Services shall revise the**  
26 **HIPAA privacy regulation (as defined in sub-**

1 section (b)) so it is consistent with the fol-  
2 lowing:

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

6           “(2) The use or disclosure by a cov-  
7 ered entity that is a group health plan,  
8 health insurance issuer that issues health  
9 insurance coverage, or issuer of a medi-  
10 care supplemental policy of protected  
11 health information that is genetic infor-  
12 mation about an individual for under-  
13 writing purposes under the plan, cov-  
14 erage, or policy shall not be a permitted  
15 use or disclosure.

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

18           “(1) GENETIC INFORMATION; GENETIC  
19 TEST; FAMILY MEMBER.—The terms ‘genetic  
20 information’, ‘genetic test’, and ‘family  
21 member’ have the meanings given such  
22 terms in section 2791 of the Public Health  
23 Service Act (42 U.S.C. 300gg-91), as  
24 amended by the Genetic Information  
25 Nondiscrimination Act of 2007.

1           **“(2) GROUP HEALTH PLAN; HEALTH IN-**  
2           **SURANCE COVERAGE; MEDICARE SUPPLE-**  
3           **MENTAL POLICY.—The terms ‘group health**  
4           **plan’ and ‘health insurance coverage’**  
5           **have the meanings given such terms**  
6           **under section 2791 of the Public Health**  
7           **Service Act (42 U.S.C. 300gg-91), and the**  
8           **term ‘medicare supplemental policy’ has**  
9           **the meaning given such term in section**  
10           **1882(g).**

11           **“(3) HIPAA PRIVACY REGULATION.—The**  
12           **term ‘HIPAA privacy regulation’ means**  
13           **the regulations promulgated by the Sec-**  
14           **retary under this part and section 264 of**  
15           **the Health Insurance Portability and Ac-**  
16           **countability Act of 1996 (42 U.S.C. 1320d-**  
17           **2 note).**

18           **“(4) UNDERWRITING PURPOSES.—The**  
19           **term ‘underwriting purposes’ means, with**  
20           **respect to a group health plan, health in-**  
21           **surance coverage, or a medicare supple-**  
22           **mental policy—**

23                   **“(A) rules for eligibility (including**  
24                   **enrollment and continued eligibility)**

1           **for, or determination of, benefits**  
2           **under the plan, coverage, or policy;**

3           **“(B) the computation of premium**  
4           **or contribution amounts under the**  
5           **plan, coverage, or policy;**

6           **“(C) the application of any pre-ex-**  
7           **isting condition exclusion under the**  
8           **plan, coverage, or policy; and**

9           **“(D) other activities related to the**  
10          **creation, renewal, or replacement of**  
11          **a contract of health insurance or**  
12          **health benefits.**

13          **“(c) PROCEDURE.—The revisions under**  
14          **subsection (a) shall be made by notice in the**  
15          **Federal Register published not later than 60**  
16          **days after the date of the enactment of this**  
17          **section and shall be effective upon publica-**  
18          **tion, without opportunity for any prior public**  
19          **comment, but may be revised, consistent with**  
20          **this section, after opportunity for public com-**  
21          **ment.”.**

22          **SEC. 106. ASSURING COORDINATION.**

23          **(a) IN GENERAL.—Except as provided in**  
24          **subsection (b), the Secretary of the Treasury,**  
25          **the Secretary of Health and Human Services,**

1 and the Secretary of Labor shall ensure,  
2 through the execution of an interagency  
3 memorandum of understanding among such  
4 Secretaries, that—

5 (1) regulations, rulings, and interpre-  
6 tations issued by such Secretaries relat-  
7 ing to the same matter over which two or  
8 more such Secretaries have responsibility  
9 under this title (and the amendments  
10 made by this title) are administered so as  
11 to have the same effect at all times; and

12 (2) coordination of policies relating to  
13 enforcing the same requirements through  
14 such Secretaries in order to have a co-  
15 ordinated enforcement strategy that  
16 avoids duplication of enforcement efforts  
17 and assigns priorities in enforcement.

18 (b) **AUTHORITY OF THE SECRETARY.**—The  
19 Secretary of Health and Human Services has  
20 the sole authority to promulgate regulations  
21 to implement the amendment made by section  
22 104.

23 **SEC. 107. REGULATIONS; EFFECTIVE DATE.**

24 (a) **REGULATIONS.**—Not later than 1 year  
25 after the date of enactment of this title, the

1 **Secretary of Labor, the Secretary of Health**  
2 **and Human Services, and the Secretary of the**  
3 **Treasury shall issue final regulations in an ac-**  
4 **cessible format to carry out this title.**

5 **(b) EFFECTIVE DATE.—Except as provided**  
6 **in section 103, the amendments made by this**  
7 **title shall take effect on the date that is 18**  
8 **months after the date of enactment of this**  
9 **Act.**

10 **TITLE II—PROHIBITING EM-**  
11 **PLOYMENT DISCRIMINATION**  
12 **ON THE BASIS OF GENETIC**  
13 **INFORMATION**

14 **SEC. 201. DEFINITIONS.**

15 **In this title:**

16 **(1) COMMISSION.—The term “Commis-**  
17 **sion” means the Equal Employment Op-**  
18 **portunity Commission as created by sec-**  
19 **tion 705 of the Civil Rights Act of 1964 (42**  
20 **U.S.C. 2000e–4).**

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

23 **(A) IN GENERAL.—The term “em-**  
24 **ployee” means—**

1           **(i) an employee (including an**  
2           **applicant), as defined in section**  
3           **701(f) of the Civil Rights Act of**  
4           **1964 (42 U.S.C. 2000e(f));**

5           **(ii) a State employee (includ-**  
6           **ing an applicant) described in**  
7           **section 304(a) of the Government**  
8           **Employee Rights Act of 1991 (42**  
9           **U.S.C. 2000e-16c(a));**

10          **(iii) a covered employee (in-**  
11          **cluding an applicant), as defined**  
12          **in section 101 of the Congres-**  
13          **sional Accountability Act of 1995**  
14          **(2 U.S.C. 1301);**

15          **(iv) a covered employee (in-**  
16          **cluding an applicant), as defined**  
17          **in section 411(c) of title 3, United**  
18          **States Code; or**

19          **(v) an employee or applicant**  
20          **to which section 717(a) of the**  
21          **Civil Rights Act of 1964 (42 U.S.C.**  
22          **2000e-16(a)) applies.**

23          **(B) EMPLOYER.—The term “em-**  
24          **ployer” means—**

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

4           (ii) an entity employing a  
5           State employee described in sec-  
6           tion 304(a) of the Government  
7           Employee Rights Act of 1991;

8           (iii) an employing office, as  
9           defined in section 101 of the Con-  
10          gressional Accountability Act of  
11          1995;

12          (iv) an employing office, as de-  
13          fined in section 411(c) of title 3,  
14          United States Code; or

15          (v) an entity to which section  
16          717(a) of the Civil Rights Act of  
17          1964 applies.

18          (C) EMPLOYMENT AGENCY; LABOR  
19          ORGANIZATION.—The terms “employ-  
20          ment agency” and “labor organiza-  
21          tion” have the meanings given the  
22          terms in section 701 of the Civil  
23          Rights Act of 1964 (42 U.S.C. 2000e).

24          (D) MEMBER.—The term “mem-  
25          ber”, with respect to a labor organiza-

1           **tion, includes an applicant for mem-**  
2           **bership in a labor organization.**

3           **(3) FAMILY MEMBER.—The term “family**  
4           **member” means with respect to an indi-**  
5           **vidual—**

6                   **(A) the spouse of the individual;**

7                   **(B) a dependent child of the indi-**  
8           **vidual, including a child who is born**  
9           **to or placed for adoption with the in-**  
10           **dividual; and**

11                   **(C) all other individuals related**  
12           **by blood to the individual or the**  
13           **spouse or child described in subpara-**  
14           **graph (A) or (B).**

15           **(4) GENETIC INFORMATION.—**

16                   **(A) IN GENERAL.—Except as pro-**  
17           **vided in subparagraph (B), the term**  
18           **“genetic information” means informa-**  
19           **tion about—**

20                           **(i) an individual’s genetic**  
21                           **tests;**

22                           **(ii) the genetic tests of family**  
23                           **members of the individual; or**

1           **(iii) the occurrence of a dis-**  
2           **ease or disorder in family mem-**  
3           **bers of the individual.**

4           **(B) EXCEPTIONS.—The term “ge-**  
5           **netic information” shall not include**  
6           **information about the sex or age of**  
7           **an individual.**

8           **(5) GENETIC MONITORING.—The term**  
9           **“genetic monitoring” means the periodic**  
10          **examination of employees to evaluate ac-**  
11          **quired modifications to their genetic ma-**  
12          **terial, such as chromosomal damage or**  
13          **evidence of increased occurrence of**  
14          **mutations, that may have developed in**  
15          **the course of employment due to expo-**  
16          **sure to toxic substances in the work-**  
17          **place, in order to identify, evaluate, and**  
18          **respond to the effects of or control ad-**  
19          **verse environmental exposures in the**  
20          **workplace.**

21          **(6) GENETIC SERVICES.—The term “ge-**  
22          **netic services” means—**

23                 **(A) a genetic test;**

1           **(B) genetic counseling (such as**  
2           **obtaining, interpreting or assessing**  
3           **genetic information); or**

4           **(C) genetic education.**

5           **(7) GENETIC TEST.—**

6           **(A) IN GENERAL.—The term “ge-**  
7           **netic test” means the analysis of**  
8           **human DNA, RNA, chromosomes, pro-**  
9           **teins, or metabolites, that detects**  
10           **genotypes, mutations, or chromo-**  
11           **somal changes.**

12           **(B) EXCEPTION.—The term “genetic**  
13           **test” does not mean an analysis of**  
14           **proteins or metabolites that does not**  
15           **detect genotypes, mutations, or chro-**  
16           **mosomal changes.**

17           **SEC. 202. EMPLOYER PRACTICES.**

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

21           **(1) to fail or refuse to hire or to dis-**  
22           **charge any employee, or otherwise to dis-**  
23           **criminate against any employee with re-**  
24           **spect to the compensation, terms, condi-**  
25           **tions, or privileges of employment of the**

1        **employee, because of genetic information**  
2        **with respect to the employee (or informa-**  
3        **tion about a request for or the receipt of**  
4        **genetic services by such employee or**  
5        **family member of such employee); or**

6            **(2) to limit, segregate, or classify the**  
7        **employees of the employer in any way**  
8        **that would deprive or tend to deprive**  
9        **any employee of employment opportuni-**  
10       **ties or otherwise adversely affect the sta-**  
11       **tus of the employee as an employee, be-**  
12       **cause of genetic information with respect**  
13       **to the employee (or information about a**  
14       **request for or the receipt of genetic serv-**  
15       **ices by such employee or family member**  
16       **of such employee).**

17       **(b) ACQUISITION OF GENETIC INFORMA-**  
18       **TION.—It shall be an unlawful employment**  
19       **practice for an employer to request, require,**  
20       **or purchase genetic information with respect**  
21       **to an employee or a family member of the em-**  
22       **ployee (or information about a request for the**  
23       **receipt of genetic services by such employee**  
24       **or a family member of such employee) ex-**  
25       **cept—**

1           **(1) where an employer inadvertently**  
2           **requests or requires family medical his-**  
3           **tory of the employee or family member of**  
4           **the employee;**

5           **(2) where—**

6                   **(A) health or genetic services are**  
7                   **offered by the employer, including**  
8                   **such services offered as part of a**  
9                   **bona fide wellness program;**

10                   **(B) the employee provides prior,**  
11                   **knowing, voluntary, and written au-**  
12                   **thorization;**

13                   **(C) only the employee (or family**  
14                   **member if the family member is re-**  
15                   **ceiving genetic services) and the li-**  
16                   **censed health care professional or**  
17                   **board certified genetic counselor in-**  
18                   **involved in providing such services re-**  
19                   **ceive individually identifiable infor-**  
20                   **mation concerning the results of such**  
21                   **services; and**

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

1           **graph (A) is only available for pur-**  
2           **poses of such services and shall not**  
3           **be disclosed to the employer except**  
4           **in aggregate terms that do not dis-**  
5           **close the identity of specific employ-**  
6           **ees;**

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

14          **(4) where an employer purchases doc-**  
15          **uments that are commercially and pub-**  
16          **licly available (including newspapers,**  
17          **magazines, periodicals, and books, but**  
18          **not including medical databases or court**  
19          **records) that include family medical his-**  
20          **tory; or**

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

1           **(A) the employer provides written**  
2 **notice of the genetic monitoring to**  
3 **the employee;**

4           **(B)(i) the employee provides**  
5 **prior, knowing, voluntary, and writ-**  
6 **ten authorization; or**

7           **(ii) the genetic monitoring is re-**  
8 **quired by Federal or State law;**

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

11           **(D) the monitoring is in compli-**  
12 **ance with—**

13                   **(i) any Federal genetic moni-**  
14 **toring regulations, including any**  
15 **such regulations that may be pro-**  
16 **mulgated by the Secretary of**  
17 **Labor pursuant to the Occupa-**  
18 **tional Safety and Health Act of**  
19 **1970 (29 U.S.C. 651 et seq.), the**  
20 **Federal Mine Safety and Health**  
21 **Act of 1977 (30 U.S.C. 801 et seq.),**  
22 **or the Atomic Energy Act of 1954**  
23 **(42 U.S.C. 2011 et seq.); or**

24                   **(ii) State genetic monitoring**  
25 **regulations, in the case of a State**

1           **that is implementing genetic mon-**  
2           **itoring regulations under the au-**  
3           **thority of the Occupational Safety**  
4           **and Health Act of 1970 (29 U.S.C.**  
5           **651 et seq.); and**

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

14          **(c) PRESERVATION OF PROTECTIONS.—In the**  
15          **case of information to which any of para-**  
16          **graphs (1) through (5) of subsection (b) ap-**  
17          **plies, such information may not be used in**  
18          **violation of paragraph (1) or (2) of subsection**  
19          **(a) or treated or disclosed in a manner that**  
20          **violates section 206.**

21          **SEC. 203. EMPLOYMENT AGENCY PRACTICES.**

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

1           (1) to fail or refuse to refer for em-  
2           ployment, or otherwise to discriminate  
3           against, any individual because of genetic  
4           information with respect to the indi-  
5           vidual (or information about a request  
6           for or the receipt of genetic services by  
7           such individual or family member of such  
8           individual);

9           (2) to limit, segregate, or classify indi-  
10          viduals or fail or refuse to refer for em-  
11          ployment any individual in any way that  
12          would deprive or tend to deprive any in-  
13          dividual of employment opportunities, or  
14          otherwise adversely affect the status of  
15          the individual as an employee, because of  
16          genetic information with respect to the  
17          individual (or information about a re-  
18          quest for or the receipt of genetic serv-  
19          ices by such individual or family member  
20          of such individual); or

21          (3) to cause or attempt to cause an  
22          employer to discriminate against an indi-  
23          vidual in violation of this title.

24          **(b) ACQUISITION OF GENETIC INFORMA-**  
25          **TION.—It shall be an unlawful employment**

1 practice for an employment agency to re-  
2 quest, require, or purchase genetic informa-  
3 tion with respect to an individual or a family  
4 member of the individual (or information  
5 about a request for the receipt of genetic serv-  
6 ices by such individual or a family member of  
7 such individual) except—

8 (1) where an employment agency in-  
9 advertently requests or requires family  
10 medical history of the individual or fam-  
11 ily member of the individual;

12 (2) where—

13 (A) health or genetic services are  
14 offered by the employment agency,  
15 including such services offered as  
16 part of a bona fide wellness program;

17 (B) the individual provides prior,  
18 knowing, voluntary, and written au-  
19 thorization;

20 (C) only the individual (or family  
21 member if the family member is re-  
22 ceiving genetic services) and the li-  
23 censed health care professional or  
24 board certified genetic counselor in-  
25 volved in providing such services re-

1           **ceive individually identifiable infor-**  
2           **mation concerning the results of such**  
3           **services; and**

4           **(D) any individually identifiable**  
5           **genetic information provided under**  
6           **subparagraph (C) in connection with**  
7           **the services provided under subpara-**  
8           **graph (A) is only available for pur-**  
9           **poses of such services and shall not**  
10          **be disclosed to the employment agen-**  
11          **cy except in aggregate terms that do**  
12          **not disclose the identity of specific**  
13          **individuals;**

14          **(3) where an employment agency re-**  
15          **quests or requires family medical history**  
16          **from the individual to comply with the**  
17          **certification provisions of section 103 of**  
18          **the Family and Medical Leave Act of 1993**  
19          **(29 U.S.C. 2613) or such requirements**  
20          **under State family and medical leave**  
21          **laws;**

22          **(4) where an employment agency pur-**  
23          **chases documents that are commercially**  
24          **and publicly available (including news-**  
25          **papers, magazines, periodicals, and**

1 books, but not including medical data-  
2 bases or court records) that include fam-  
3 ily medical history; or

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

8 (A) the employment agency pro-  
9 vides written notice of the genetic  
10 monitoring to the individual;

11 (B)(i) the individual provides  
12 prior, knowing, voluntary, and writ-  
13 ten authorization; or

14 (ii) the genetic monitoring is re-  
15 quired by Federal or State law;

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

18 (D) the monitoring is in compli-  
19 ance with—

20 (i) any Federal genetic moni-  
21 toring regulations, including any  
22 such regulations that may be pro-  
23 mulgated by the Secretary of  
24 Labor pursuant to the Occupa-  
25 tional Safety and Health Act of

1           **1970 (29 U.S.C. 651 et seq.), the**  
2           **Federal Mine Safety and Health**  
3           **Act of 1977 (30 U.S.C. 801 et seq.),**  
4           **or the Atomic Energy Act of 1954**  
5           **(42 U.S.C. 2011 et seq.); or**

6           **(ii) State genetic monitoring**  
7           **regulations, in the case of a State**  
8           **that is implementing genetic mon-**  
9           **itoring regulations under the au-**  
10          **thority of the Occupational Safety**  
11          **and Health Act of 1970 (29 U.S.C.**  
12          **651 et seq.); and**

13          **(E) the employment agency, ex-**  
14          **cluding any licensed health care pro-**  
15          **fessional or board certified genetic**  
16          **counselor that is involved in the ge-**  
17          **netic monitoring program, receives**  
18          **the results of the monitoring only in**  
19          **aggregate terms that do not disclose**  
20          **the identity of specific individuals.**

21          **(c) PRESERVATION OF PROTECTIONS.—In the**  
22          **case of information to which any of para-**  
23          **graphs (1) through (5) of subsection (b) ap-**  
24          **plies, such information may not be used in**  
25          **violation of paragraph (1) or (2) of subsection**

1 (a) or treated or disclosed in a manner that  
2 violates section 206.

3 SEC. 204. LABOR ORGANIZATION PRACTICES.

4 (a) USE OF GENETIC INFORMATION.—It shall  
5 be an unlawful employment practice for a  
6 labor organization—

7 (1) to exclude or to expel from the  
8 membership of the organization, or other-  
9 wise to discriminate against, any member  
10 because of genetic information with re-  
11 spect to the member (or information  
12 about a request for or the receipt of ge-  
13 netic services by such member or family  
14 member of such member);

15 (2) to limit, segregate, or classify the  
16 members of the organization, or fail or  
17 refuse to refer for employment any mem-  
18 ber, in any way that would deprive or  
19 tend to deprive any member of employ-  
20 ment opportunities, or otherwise ad-  
21 versely affect the status of the member as  
22 an employee, because of genetic informa-  
23 tion with respect to the member (or infor-  
24 mation about a request for or the receipt

1 of genetic services by such member or  
2 family member of such member); or

3 (3) to cause or attempt to cause an  
4 employer to discriminate against a mem-  
5 ber in violation of this title.

6 (b) ACQUISITION OF GENETIC INFORMA-  
7 TION.—It shall be an unlawful employment  
8 practice for a labor organization to request,  
9 require, or purchase genetic information with  
10 respect to a member or a family member of  
11 the member (or information about a request  
12 for the receipt of genetic services by such  
13 member or a family member of such member)  
14 except—

15 (1) where a labor organization inad-  
16 vertently requests or requires family  
17 medical history of the member or family  
18 member of the member;

19 (2) where—

20 (A) health or genetic services are  
21 offered by the labor organization, in-  
22 cluding such services offered as part  
23 of a bona fide wellness program;

1           **(B) the member provides prior,**  
2           **knowing, voluntary, and written au-**  
3           **thorization;**

4           **(C) only the member (or family**  
5           **member if the family member is re-**  
6           **ceiving genetic services) and the li-**  
7           **censed health care professional or**  
8           **board certified genetic counselor in-**  
9           **involved in providing such services re-**  
10          **ceive individually identifiable infor-**  
11          **mation concerning the results of such**  
12          **services; and**

13          **(D) any individually identifiable**  
14          **genetic information provided under**  
15          **subparagraph (C) in connection with**  
16          **the services provided under subpara-**  
17          **graph (A) is only available for pur-**  
18          **poses of such services and shall not**  
19          **be disclosed to the labor organization**  
20          **except in aggregate terms that do not**  
21          **disclose the identity of specific mem-**  
22          **bers;**

23          **(3) where a labor organization re-**  
24          **quests or requires family medical history**  
25          **from the members to comply with the**

1       **certification provisions of section 103 of**  
2       **the Family and Medical Leave Act of 1993**  
3       **(29 U.S.C. 2613) or such requirements**  
4       **under State family and medical leave**  
5       **laws;**

6           **(4) where a labor organization pur-**  
7       **chases documents that are commercially**  
8       **and publicly available (including news-**  
9       **papers, magazines, periodicals, and**  
10       **books, but not including medical data-**  
11       **bases or court records) that include fam-**  
12       **ily medical history; or**

13           **(5) where the information involved is**  
14       **to be used for genetic monitoring of the**  
15       **biological effects of toxic substances in**  
16       **the workplace, but only if—**

17           **(A) the labor organization pro-**  
18       **vides written notice of the genetic**  
19       **monitoring to the member;**

20           **(B)(i) the member provides prior,**  
21       **knowing, voluntary, and written au-**  
22       **thorization; or**

23           **(ii) the genetic monitoring is re-**  
24       **quired by Federal or State law;**

1           **(C) the member is informed of in-**  
2           **dividual monitoring results;**

3           **(D) the monitoring is in compli-**  
4           **ance with—**

5                   **(i) any Federal genetic moni-**  
6                   **toring regulations, including any**  
7                   **such regulations that may be pro-**  
8                   **mulgated by the Secretary of**  
9                   **Labor pursuant to the Occupa-**  
10                   **tional Safety and Health Act of**  
11                   **1970 (29 U.S.C. 651 et seq.), the**  
12                   **Federal Mine Safety and Health**  
13                   **Act of 1977 (30 U.S.C. 801 et seq.),**  
14                   **or the Atomic Energy Act of 1954**  
15                   **(42 U.S.C. 2011 et seq.); or**

16                   **(ii) State genetic monitoring**  
17                   **regulations, in the case of a State**  
18                   **that is implementing genetic mon-**  
19                   **itoring regulations under the au-**  
20                   **thority of the Occupational Safety**  
21                   **and Health Act of 1970 (29 U.S.C.**  
22                   **651 et seq.); and**

23           **(E) the labor organization, exclud-**  
24           **ing any licensed health care profes-**  
25           **sional or board certified genetic**

1           counselor that is involved in the ge-  
2           netic monitoring program, receives  
3           the results of the monitoring only in  
4           aggregate terms that do not disclose  
5           the identity of specific members.

6           (c) **PRESERVATION OF PROTECTIONS.**—In the  
7           case of information to which any of para-  
8           graphs (1) through (5) of subsection (b) ap-  
9           plies, such information may not be used in  
10          violation of paragraph (1) or (2) of subsection  
11          (a) or treated or disclosed in a manner that  
12          violates section 206.

13          **SEC. 205. TRAINING PROGRAMS.**

14          (a) **USE OF GENETIC INFORMATION.**—It shall  
15          be an unlawful employment practice for any  
16          employer, labor organization, or joint labor-  
17          management committee controlling appren-  
18          ticeship or other training or retraining, in-  
19          cluding on-the-job training programs—

20                  (1) to discriminate against any indi-  
21                  vidual because of genetic information  
22                  with respect to the individual (or infor-  
23                  mation about a request for or the receipt  
24                  of genetic services by such individual or  
25                  a family member of such individual) in

1 admission to, or employment in, any pro-  
2 gram established to provide apprentice-  
3 ship or other training or retraining;

4 (2) to limit, segregate, or classify the  
5 applicants for or participants in such ap-  
6 prenticeship or other training or retrain-  
7 ing, or fail or refuse to refer for employ-  
8 ment any individual, in any way that  
9 would deprive or tend to deprive any in-  
10 dividual of employment opportunities, or  
11 otherwise adversely affect the status of  
12 the individual as an employee, because of  
13 genetic information with respect to the  
14 individual (or information about a re-  
15 quest for or receipt of genetic services by  
16 such individual or family member of such  
17 individual); or

18 (3) to cause or attempt to cause an  
19 employer to discriminate against an ap-  
20 plicant for or a participant in such ap-  
21 prenticeship or other training or retrain-  
22 ing in violation of this title.

23 (b) ACQUISITION OF GENETIC INFORMA-  
24 TION.—It shall be an unlawful employment  
25 practice for an employer, labor organization,

1 or joint labor-management committee de-  
2 scribed in subsection (a) to request, require,  
3 or purchase genetic information with respect  
4 to an individual or a family member of the in-  
5 dividual (or information about a request for  
6 the receipt of genetic services by such indi-  
7 vidual or a family member of such individual)  
8 except—

9 (1) where the employer, labor organi-  
10 zation, or joint labor-management com-  
11 mittee inadvertently requests or requires  
12 family medical history of the individual  
13 or family member of the individual;

14 (2) where—

15 (A) health or genetic services are  
16 offered by the employer, labor organi-  
17 zation, or joint labor-management  
18 committee, including such services  
19 offered as part of a bona fide wellness  
20 program;

21 (B) the individual provides prior,  
22 knowing, voluntary, and written au-  
23 thorization;

24 (C) only the individual (or family  
25 member if the family member is re-

1           ceiving genetic services) and the li-  
2           censed health care professional or  
3           board certified genetic counselor in-  
4           volved in providing such services re-  
5           ceive individually identifiable infor-  
6           mation concerning the results of such  
7           services;

8           (D) any individually identifiable  
9           genetic information provided under  
10          subparagraph (C) in connection with  
11          the services provided under subpara-  
12          graph (A) is only available for pur-  
13          poses of such services and shall not  
14          be disclosed to the employer, labor  
15          organization, or joint labor-manage-  
16          ment committee except in aggregate  
17          terms that do not disclose the iden-  
18          tity of specific individuals;

19          (3) where the employer, labor organi-  
20          zation, or joint labor-management com-  
21          mittee requests or requires family med-  
22          ical history from the individual to comply  
23          with the certification provisions of sec-  
24          tion 103 of the Family and Medical Leave  
25          Act of 1993 (29 U.S.C. 2613) or such re-

1       **quirements under State family and med-**  
2       **ical leave laws;**

3           **(4) where the employer, labor organi-**  
4       **zation, or joint labor-management com-**  
5       **mittee purchases documents that are**  
6       **commercially and publicly available (in-**  
7       **cluding newspapers, magazines, periodi-**  
8       **cals, and books, but not including med-**  
9       **ical databases or court records) that in-**  
10       **clude family medical history; or**

11           **(5) where the information involved is**  
12       **to be used for genetic monitoring of the**  
13       **biological effects of toxic substances in**  
14       **the workplace, but only if—**

15           **(A) the employer, labor organiza-**  
16       **tion, or joint labor-management com-**  
17       **mittee provides written notice of the**  
18       **genetic monitoring to the individual;**

19           **(B)(i) the individual provides**  
20       **prior, knowing, voluntary, and writ-**  
21       **ten authorization; or**

22           **(ii) the genetic monitoring is re-**  
23       **quired by Federal or State law;**

24           **(C) the individual is informed of**  
25       **individual monitoring results;**

1           **(D) the monitoring is in compli-**  
2           **ance with—**

3           **(i) any Federal genetic moni-**  
4           **toring regulations, including any**  
5           **such regulations that may be pro-**  
6           **mulgated by the Secretary of**  
7           **Labor pursuant to the Occupa-**  
8           **tional Safety and Health Act of**  
9           **1970 (29 U.S.C. 651 et seq.), the**  
10          **Federal Mine Safety and Health**  
11          **Act of 1977 (30 U.S.C. 801 et seq.),**  
12          **or the Atomic Energy Act of 1954**  
13          **(42 U.S.C. 2011 et seq.); or**

14          **(ii) State genetic monitoring**  
15          **regulations, in the case of a State**  
16          **that is implementing genetic mon-**  
17          **itoring regulations under the au-**  
18          **thority of the Occupational Safety**  
19          **and Health Act of 1970 (29 U.S.C.**  
20          **651 et seq.); and**

21          **(E) the employer, labor organiza-**  
22          **tion, or joint labor-management com-**  
23          **mittee, excluding any licensed health**  
24          **care professional or board certified**  
25          **genetic counselor that is involved in**

1           **the genetic monitoring program, re-**  
2           **ceives the results of the monitoring**  
3           **only in aggregate terms that do not**  
4           **disclose the identity of specific indi-**  
5           **viduals.**

6           **(c) PRESERVATION OF PROTECTIONS.—In the**  
7           **case of information to which any of para-**  
8           **graphs (1) through (5) of subsection (b) ap-**  
9           **plies, such information may not be used in**  
10          **violation of paragraph (1) or (2) of subsection**  
11          **(a) or treated or disclosed in a manner that**  
12          **violates section 206.**

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

14          **(a) TREATMENT OF INFORMATION AS PART OF**  
15          **CONFIDENTIAL MEDICAL RECORD.—If an em-**  
16          **ployer, employment agency, labor organiza-**  
17          **tion, or joint labor-management committee**  
18          **possesses genetic information about an em-**  
19          **ployee or member (or information about a re-**  
20          **quest for or receipt of genetic services by**  
21          **such employee or member or family member**  
22          **of such employee or member), such informa-**  
23          **tion shall be maintained on separate forms**  
24          **and in separate medical files and be treated**

1 as a confidential medical record of the em-  
2 ployee or member.

3 (b) **LIMITATION ON DISCLOSURE.—An em-**  
4 **ployer, employment agency, labor organiza-**  
5 **tion, or joint labor-management committee**  
6 **shall not disclose genetic information con-**  
7 **cerning an employee or member (or informa-**  
8 **tion about a request for or receipt of genetic**  
9 **services by such employee or member or fam-**  
10 **ily member of such employee or member) ex-**  
11 **cept—**

12 (1) **to the employee (or family mem-**  
13 **ber if the family member is receiving the**  
14 **genetic services) or member of a labor or-**  
15 **ganization at the request of the employee**  
16 **or member of such organization;**

17 (2) **to an occupational or other health**  
18 **researcher if the research is conducted in**  
19 **compliance with the regulations and pro-**  
20 **tections provided for under part 46 of**  
21 **title 45, Code of Federal Regulations;**

22 (3) **in response to an order of a court,**  
23 **except that—**

24 (A) **the employer, employment**  
25 **agency, labor organization, or joint**

1           **labor-management committee may**  
2           **disclose only the genetic information**  
3           **expressly authorized by such order;**  
4           **and**

5           **(B) if the court order was secured**  
6           **without the knowledge of the em-**  
7           **ployee or member to whom the infor-**  
8           **mation refers, the employer, employ-**  
9           **ment agency, labor organization, or**  
10          **joint labor-management committee**  
11          **shall provide the employee or mem-**  
12          **ber with adequate notice to challenge**  
13          **the court order;**

14          **(4) to government officials who are**  
15          **investigating compliance with this title if**  
16          **the information is relevant to the inves-**  
17          **tigation; or**

18          **(5) to the extent that such disclosure**  
19          **is made in connection with the employ-**  
20          **ee's compliance with the certification**  
21          **provisions of section 103 of the Family**  
22          **and Medical Leave Act of 1993 (29 U.S.C.**  
23          **2613) or such requirements under State**  
24          **family and medical leave laws.**

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

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

4 **(1) IN GENERAL.—**The powers, rem-  
5 edies, and procedures provided in sec-  
6 tions 705, 706, 707, 709, 710, and 711 of the  
7 Civil Rights Act of 1964 (42 U.S.C. 2000e-  
8 4 et seq.) to the Commission, the Attorney  
9 General, or any person, alleging a viola-  
10 tion of title VII of that Act (42 U.S.C.  
11 2000e et seq.) shall be the powers, rem-  
12 edies, and procedures this title provides  
13 to the Commission, the Attorney General,  
14 or any person, respectively, alleging an  
15 unlawful employment practice in viola-  
16 tion of this title against an employee de-  
17 scribed in section 201(2)(A)(i), except as  
18 provided in paragraphs (2) and (3).

19 **(2) COSTS AND FEES.—**The powers,  
20 remedies, and procedures provided in  
21 subsections (b) and (c) of section 722 of  
22 the Revised Statutes (42 U.S.C. 1988),  
23 shall be powers, remedies, and proce-  
24 dures this title provides to the Commis-  
25 sion, the Attorney General, or any per-  
26 son, alleging such a practice.

1           **(3) DAMAGES.—**The powers, remedies,  
2           and procedures provided in section 1977A  
3           of the Revised Statutes (42 U.S.C. 1981a),  
4           including the limitations contained in  
5           subsection (b)(3) of such section 1977A,  
6           shall be powers, remedies, and proce-  
7           dures this title provides to the Commis-  
8           sion, the Attorney General, or any per-  
9           son, alleging such a practice (not an em-  
10          ployment practice specifically excluded  
11          from coverage under section 1977A(a)(1)  
12          of the Revised Statutes).

13           **(b) EMPLOYEES COVERED BY GOVERNMENT**  
14   **EMPLOYEE RIGHTS ACT OF 1991.—**

15           **(1) IN GENERAL.—**The powers, rem-  
16          edies, and procedures provided in sec-  
17          tions 302 and 304 of the Government Em-  
18          ployee Rights Act of 1991 (42 U.S.C.  
19          2000e-16b, 2000e-16c) to the Commission,  
20          or any person, alleging a violation of sec-  
21          tion 302(a)(1) of that Act (42 U.S.C. 2000e-  
22          16b(a)(1)) shall be the powers, remedies,  
23          and procedures this title provides to the  
24          Commission, or any person, respectively,  
25          alleging an unlawful employment prac-

1       **tice in violation of this title against an**  
2       **employee described in section**  
3       **201(2)(A)(ii), except as provided in para-**  
4       **graphs (2) and (3).**

5           **(2) COSTS AND FEES.—The powers,**  
6       **remedies, and procedures provided in**  
7       **subsections (b) and (c) of section 722 of**  
8       **the Revised Statutes (42 U.S.C. 1988),**  
9       **shall be powers, remedies, and proce-**  
10       **dures this title provides to the Commis-**  
11       **sion, or any person, alleging such a prac-**  
12       **tice.**

13           **(3) DAMAGES.—The powers, remedies,**  
14       **and procedures provided in section 1977A**  
15       **of the Revised Statutes (42 U.S.C. 1981a),**  
16       **including the limitations contained in**  
17       **subsection (b)(3) of such section 1977A,**  
18       **shall be powers, remedies, and proce-**  
19       **dures this title provides to the Commis-**  
20       **sion, or any person, alleging such a prac-**  
21       **tice (not an employment practice specifi-**  
22       **cally excluded from coverage under sec-**  
23       **tion 1977A(a)(1) of the Revised Statutes).**

24           **(c) EMPLOYEES COVERED BY CONGRESSIONAL**  
25       **ACCOUNTABILITY ACT OF 1995.—**

1           **(1) IN GENERAL.—**The powers, remedies, and procedures provided in the  
2           **Congressional Accountability Act of 1995**  
3           **(2 U.S.C. 1301 et seq.)** to the Board (as defined in section 101 of that Act (2 U.S.C.  
4           **1301)), or any person, alleging a violation**  
5           **of section 201(a)(1) of that Act (42 U.S.C.**  
6           **1311(a)(1)) shall be the powers, remedies,**  
7           **and procedures this title provides to that**  
8           **Board, or any person, alleging an unlawful**  
9           **employment practice in violation of**  
10           **this title against an employee described**  
11           **in section 201(2)(A)(iii), except as provided**  
12           **in paragraphs (2) and (3).**

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

22           **(3) DAMAGES.—**The powers, remedies, and procedures provided in section 1977A  
23           **of the Revised Statutes (42 U.S.C. 1981a),**  
24           **including the limitations contained in**  
25

1 subsection (b)(3) of such section 1977A,  
2 shall be powers, remedies, and proce-  
3 dures this title provides to that Board, or  
4 any person, alleging such a practice (not  
5 an employment practice specifically ex-  
6 cluded from coverage under section  
7 1977A(a)(1) of the Revised Statutes).

8 (4) OTHER APPLICABLE PROVISIONS.—

9 With respect to a claim alleging a prac-  
10 tice described in paragraph (1), title III of  
11 the Congressional Accountability Act of  
12 1995 (2 U.S.C. 1381 et seq.) shall apply in  
13 the same manner as such title applies  
14 with respect to a claim alleging a viola-  
15 tion of section 201(a)(1) of such Act (2  
16 U.S.C. 1311(a)(1)).

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

19 (1) IN GENERAL.—The powers, rem-  
20 edies, and procedures provided in chap-  
21 ter 5 of title 3, United States Code, to the  
22 President, the Commission, the Merit Sys-  
23 tems Protection Board, or any person, al-  
24 leging a violation of section 411(a)(1) of  
25 that title, shall be the powers, remedies,

1       **and procedures this title provides to the**  
2       **President, the Commission, such Board,**  
3       **or any person, respectively, alleging an**  
4       **unlawful employment practice in viola-**  
5       **tion of this title against an employee de-**  
6       **scribed in section 201(2)(A)(iv), except as**  
7       **provided in paragraphs (2) and (3).**

8           **(2) COSTS AND FEES.—The powers,**  
9       **remedies, and procedures provided in**  
10       **subsections (b) and (c) of section 722 of**  
11       **the Revised Statutes (42 U.S.C. 1988),**  
12       **shall be powers, remedies, and proce-**  
13       **dures this title provides to the President,**  
14       **the Commission, such Board, or any per-**  
15       **son, alleging such a practice.**

16           **(3) DAMAGES.—The powers, remedies,**  
17       **and procedures provided in section 1977A**  
18       **of the Revised Statutes (42 U.S.C. 1981a),**  
19       **including the limitations contained in**  
20       **subsection (b)(3) of such section 1977A,**  
21       **shall be powers, remedies, and proce-**  
22       **dures this title provides to the President,**  
23       **the Commission, such Board, or any per-**  
24       **son, alleging such a practice (not an em-**  
25       **ployment practice specifically excluded**

1 from coverage under section 1977A(a)(1)  
2 of the Revised Statutes).

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

5 (1) IN GENERAL.—The powers, rem-  
6 edies, and procedures provided in section  
7 717 of the Civil Rights Act of 1964 (42  
8 U.S.C. 2000e-16) to the Commission, the  
9 Attorney General, the Librarian of Con-  
10 gress, or any person, alleging a violation  
11 of that section shall be the powers, rem-  
12 edies, and procedures this title provides  
13 to the Commission, the Attorney General,  
14 the Librarian of Congress, or any person,  
15 respectively, alleging an unlawful em-  
16 ployment practice in violation of this title  
17 against an employee or applicant de-  
18 scribed in section 201(2)(A)(v), except as  
19 provided in paragraphs (2) and (3).

20 (2) COSTS AND FEES.—The powers,  
21 remedies, and procedures provided in  
22 subsections (b) and (c) of section 722 of  
23 the Revised Statutes (42 U.S.C. 1988),  
24 shall be powers, remedies, and proce-  
25 dures this title provides to the Commis-

1       sion, the Attorney General, the Librarian  
2       of Congress, or any person, alleging such  
3       a practice.

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

17      (f) DEFINITION.—In this section, the term  
18      “Commission” means the Equal Employment  
19      Opportunity Commission.

20      SEC. 208. DISPARATE IMPACT.

21      (a) GENERAL RULE.—Notwithstanding any  
22      other provision of this Act, “disparate im-  
23      pact”, as that term is used in section 703(k) of  
24      the Civil Rights Act of 1964 (42 U.S.C. 2000e–

1 **2(k)), on the basis of genetic information does**  
2 **not establish a cause of action under this Act.**

3 **(b) COMMISSION.—On the date that is 6**  
4 **years after the date of enactment of this Act,**  
5 **there shall be established a commission, to be**  
6 **known as the Genetic Nondiscrimination**  
7 **Study Commission (referred to in this section**  
8 **as the “Commission”) to review the devel-**  
9 **oping science of genetics and to make rec-**  
10 **ommendations to Congress regarding wheth-**  
11 **er to provide a disparate impact cause of ac-**  
12 **tion under this Act.**

13 **(c) MEMBERSHIP.—**

14 **(1) IN GENERAL.—The Commission**  
15 **shall be composed of 8 members, of**  
16 **which—**

17 **(A) 1 member shall be appointed**  
18 **by the Majority Leader of the Senate;**

19 **(B) 1 member shall be appointed**  
20 **by the Minority Leader of the Senate;**

21 **(C) 1 member shall be appointed**  
22 **by the Chairman of the Committee on**  
23 **Health, Education, Labor, and Pen-**  
24 **sions of the Senate;**

1           **(D) 1 member shall be appointed**  
2           **by the ranking minority member of**  
3           **the Committee on Health, Education,**  
4           **Labor, and Pensions of the Senate;**

5           **(E) 1 member shall be appointed**  
6           **by the Speaker of the House of Rep-**  
7           **resentatives;**

8           **(F) 1 member shall be appointed**  
9           **by the Minority Leader of the House**  
10          **of Representatives;**

11          **(G) 1 member shall be appointed**  
12          **by the Chairman of the Committee on**  
13          **Education and the Workforce of the**  
14          **House of Representatives; and**

15          **(H) 1 member shall be appointed**  
16          **by the ranking minority member of**  
17          **the Committee on Education and the**  
18          **Workforce of the House of Represent-**  
19          **atives.**

20          **(2) COMPENSATION AND EXPENSES.—The**  
21          **members of the Commission shall not re-**  
22          **ceive compensation for the performance**  
23          **of services for the Commission, but shall**  
24          **be allowed travel expenses, including per**  
25          **diem in lieu of subsistence, at rates au-**

1       **thorized for employees of agencies under**  
2       **subchapter I of chapter 57 of title 5,**  
3       **United States Code, while away from**  
4       **their homes or regular places of business**  
5       **in the performance of services for the**  
6       **Commission.**

7       **(d) ADMINISTRATIVE PROVISIONS.—**

8               **(1) LOCATION.—The Commission shall**  
9       **be located in a facility maintained by the**  
10       **Equal Employment Opportunity Commis-**  
11       **sion.**

12               **(2) DETAIL OF GOVERNMENT EMPLOY-**  
13       **EES.—Any Federal Government employee**  
14       **may be detailed to the Commission with-**  
15       **out reimbursement, and such detail shall**  
16       **be without interruption or loss of civil**  
17       **service status or privilege.**

18               **(3) INFORMATION FROM FEDERAL AGEN-**  
19       **CIES.—The Commission may secure di-**  
20       **rectly from any Federal department or**  
21       **agency such information as the Commis-**  
22       **sion considers necessary to carry out the**  
23       **provisions of this section. Upon request**  
24       **of the Commission, the head of such de-**

1        **partment or agency shall furnish such in-**  
2        **formation to the Commission.**

3            **(4) HEARINGS.—The Commission may**  
4        **hold such hearings, sit and act at such**  
5        **times and places, take such testimony,**  
6        **and receive such evidence as the Com-**  
7        **mission considers advisable to carry out**  
8        **the objectives of this section, except that,**  
9        **to the extent possible, the Commission**  
10       **shall use existing data and research.**

11           **(5) POSTAL SERVICES.—The Commis-**  
12       **sion may use the United States mails in**  
13       **the same manner and under the same**  
14       **conditions as other departments and**  
15       **agencies of the Federal Government.**

16           **(e) REPORT.—Not later than 1 year after all**  
17       **of the members are appointed to the Commis-**  
18       **sion under subsection (c)(1), the Commission**  
19       **shall submit to Congress a report that summa-**  
20       **rizes the findings of the Commission and**  
21       **makes such recommendations for legislation**  
22       **as are consistent with this Act.**

23           **(f) AUTHORIZATION OF APPROPRIATIONS.—**  
24       **There are authorized to be appropriated to**  
25       **the Equal Employment Opportunity Commis-**

1 sion such sums as may be necessary to carry  
2 out this section.

3 SEC. 209. CONSTRUCTION.

4 Nothing in this title shall be construed  
5 to—

6 (1) limit the rights or protections of  
7 an individual under the Americans with  
8 Disabilities Act of 1990 (42 U.S.C. 12101 et  
9 seq.), including coverage afforded to indi-  
10 viduals under section 102 of such Act (42  
11 U.S.C. 12112), or under the Rehabilitation  
12 Act of 1973 (29 U.S.C. 701 et seq.);

13 (2)(A) limit the rights or protections  
14 of an individual to bring an action under  
15 this title against an employer, employ-  
16 ment agency, labor organization, or joint  
17 labor-management committee for a viola-  
18 tion of this title; or

19 (B) establish a violation under this  
20 title for an employer, employment agen-  
21 cy, labor organization, or joint labor-man-  
22 agement committee of a provision of the  
23 amendments made by title I;

24 (3) limit the rights or protections of  
25 an individual under any other Federal or

1 State statute that provides equal or  
2 greater protection to an individual than  
3 the rights or protections provided for  
4 under this title;

5 (4) apply to the Armed Forces Reposi-  
6 tory of Specimen Samples for the Identi-  
7 fication of Remains;

8 (5) limit or expand the protections,  
9 rights, or obligations of employees or em-  
10 ployers under applicable workers' com-  
11 pensation laws;

12 (6) limit the authority of a Federal de-  
13 partment or agency to conduct or spon-  
14 sor occupational or other health research  
15 that is conducted in compliance with the  
16 regulations contained in part 46 of title  
17 45, Code of Federal Regulations (or any  
18 corresponding or similar regulation or  
19 rule); and

20 (7) limit the statutory or regulatory  
21 authority of the Occupational Safety and  
22 Health Administration or the Mine Safety  
23 and Health Administration to promulgate  
24 or enforce workplace safety and health  
25 laws and regulations.

1 SEC. 210. MEDICAL INFORMATION THAT IS NOT GENETIC  
2 INFORMATION.

3 **An employer, employment agency, labor**  
4 **organization, or joint labor-management com-**  
5 **mittee shall not be considered to be in viola-**  
6 **tion of this title based on the use, acquisition,**  
7 **or disclosure of medical information that is**  
8 **not genetic information about a manifested**  
9 **disease, disorder, or pathological condition of**  
10 **an employee or member, including a mani-**  
11 **fested disease, disorder, or pathological con-**  
12 **dition that has or may have a genetic basis.**

13 SEC. 211. REGULATIONS.

14 **Not later than 1 year after the date of en-**  
15 **actment of this title, the Commission shall**  
16 **issue final regulations in an accessible format**  
17 **to carry out this title.**

18 SEC. 212. AUTHORIZATION OF APPROPRIATIONS.

19 **There are authorized to be appropriated**  
20 **such sums as may be necessary to carry out**  
21 **this title (except for section 208).**

22 SEC. 213. EFFECTIVE DATE.

23 **This title takes effect on the date that is**  
24 **18 months after the date of enactment of this**  
25 **Act.**

1       **TITLE III—MISCELLANEOUS**  
 2                           **PROVISION**

3   **SEC. 301. SEVERABILITY.**

4       **If any provision of this Act, an amend-**  
 5 **ment made by this Act, or the application of**  
 6 **such provision or amendment to any person**  
 7 **or circumstance is held to be unconstitu-**  
 8 **tional, the remainder of this Act, the amend-**  
 9 **ments made by this Act, and the application**  
 10 **of such provisions to any person or cir-**  
 11 **cumstance shall not be affected thereby.**

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

13       **(a) SHORT TITLE.—This Act may be cited as**  
 14 **the “Genetic Information Nondiscrimination**  
 15 **Act of 2007”.**

16       **(b) TABLE OF CONTENTS.—The table of con-**  
 17 **tents of 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 title XVIII of the Social Security Act  
 relating to medigap.*

*Sec. 104. Privacy and confidentiality.*

*Sec. 104A. Privacy and confidentiality.*

*Sec. 105. Assuring coordination.*

*Sec. 106. Relationship to title II with respect to enforcement.*

*Sec. 107. Regulations; effective date.*

**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 PROVISION**

- Sec. 301. Severability.*

1 **SEC. 2. FINDINGS.**

2 ***Congress makes the following findings:***

3 ***(1) Deciphering the sequence of the***  
4 ***human genome and other advances in ge-***  
5 ***netics open major new opportunities for***  
6 ***medical progress. New knowledge about***  
7 ***the genetic basis of illness will allow for***  
8 ***earlier detection of illnesses, often before***  
9 ***symptoms have begun. Genetic testing can***  
10 ***allow individuals to take steps to reduce***  
11 ***the likelihood that they will contract a***  
12 ***particular disorder. New knowledge about***  
13 ***genetics may allow for the development of***  
14 ***better therapies that are more effective***  
15 ***against disease or have fewer side effects***  
16 ***than current treatments. These advances***

1        *give rise to the potential misuse of genetic*  
2        *information to discriminate in health in-*  
3        *surance and employment.*

4            (2) *The early science of genetics be-*  
5        *came the basis of State laws that provided*  
6        *for the sterilization of persons having pre-*  
7        *sumed genetic “defects” such as mental*  
8        *retardation, mental disease, epilepsy,*  
9        *blindness, and hearing loss, among other*  
10       *conditions. The first sterilization law was*  
11       *enacted in the State of Indiana in 1907.*  
12       *By 1981, a majority of States adopted ster-*  
13       *ilization laws to “correct” apparent ge-*  
14       *netic traits or tendencies. Many of these*  
15       *State laws have since been repealed, and*  
16       *many have been modified to include essen-*  
17       *tial constitutional requirements of due*  
18       *process and equal protection. However,*  
19       *the current explosion in the science of ge-*  
20       *netics, and the history of sterilization*  
21       *laws by the States based on early genetic*  
22       *science, compels Congressional action in*  
23       *this area.*

24            (3) *Although genes are facially neu-*  
25        *tral markers, many genetic conditions*

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

23            *(4) Congress has been informed of ex-*  
24            *amples of genetic discrimination in the*  
25            *workplace. These include the use of pre-*

1 *employment genetic screening at Lawrence Berkeley Laboratory, which led to a*  
2 *court decision in favor of the employees in*  
3 *that case Norman-Bloodsaw v. Lawrence*  
4 *Berkeley Laboratory (135 F.3d 1260, 1269*  
5 *(9th Cir. 1998)). Congress clearly has a*  
6 *compelling public interest in relieving the*  
7 *fear of discrimination and in prohibiting*  
8 *its actual practice in employment and*  
9 *health insurance.*

11 (5) *Federal law addressing genetic*  
12 *discrimination in health insurance and*  
13 *employment is incomplete in both the*  
14 *scope and depth of its protections. More-*  
15 *over, while many States have enacted*  
16 *some type of genetic non-discrimination*  
17 *law, these laws vary widely with respect to*  
18 *their approach, application, and level of*  
19 *protection. Congress has collected sub-*  
20 *stantial evidence that the American pub-*  
21 *lic and the medical community find the*  
22 *existing patchwork of State and Federal*  
23 *laws to be confusing and inadequate to*  
24 *protect them from discrimination. There-*  
25 *fore Federal legislation establishing a na-*

1 *tional and uniform basic standard is nec-*  
 2 *essary to fully protect the public from dis-*  
 3 *crimination and allay their concerns*  
 4 *about the potential for discrimination,*  
 5 *thereby allowing individuals to take ad-*  
 6 *vantage of genetic testing, technologies,*  
 7 *research, and new therapies.*

8 **TITLE I—GENETIC NON-**  
 9 **DISCRIMINATION IN HEALTH**  
 10 **INSURANCE**

11 **SEC. 101. AMENDMENTS TO EMPLOYEE RETIREMENT IN-**  
 12 **COME SECURITY ACT OF 1974.**

13 **(a) PROHIBITION OF HEALTH DISCRIMINA-**  
 14 **TION ON THE BASIS OF GENETIC INFORMATION OR**  
 15 **GENETIC SERVICES.—**

16 **(1) NO ENROLLMENT RESTRICTION FOR**  
 17 **GENETIC SERVICES.—Section 702(a)(1)(F) of**  
 18 **the Employee Retirement Income Security**  
 19 **Act of 1974 (29 U.S.C. 1182(a)(1)(F)) is**  
 20 **amended by inserting before the period**  
 21 **the following: “(including information**  
 22 **about a request for or receipt of genetic**  
 23 **services by an individual or family mem-**  
 24 **ber of such individual)”.**

1           **(2) NO DISCRIMINATION IN GROUP PRE-**  
2           **MIUMS BASED ON GENETIC INFORMATION.—**  
3           **Section 702(b) of the Employee Retirement**  
4           **Income Security Act of 1974 (29 U.S.C.**  
5           **1182(b)) is amended—**

6                   **(A) in paragraph (2)(A), by insert-**  
7                   **ing before the semicolon the following:**  
8                   **“except as provided in paragraph (3)”;**  
9                   **and**

10                   **(B) by adding at the end the fol-**  
11                   **lowing:**

12                   **“(3) NO DISCRIMINATION IN GROUP PRE-**  
13                   **MIUMS BASED ON GENETIC INFORMATION.—**  
14                   **For purposes of this section, a group**  
15                   **health plan, or a health insurance issuer**  
16                   **offering group health insurance coverage**  
17                   **in connection with a group health plan,**  
18                   **shall not adjust premium or contribution**  
19                   **amounts for a group on the basis of ge-**  
20                   **netic information concerning an indi-**  
21                   **vidual in the group or a family member of**  
22                   **the individual (including information**  
23                   **about a request for or receipt of genetic**  
24                   **services by an individual or family mem-**  
25                   **ber of such individual).”.**

1       ***(b) LIMITATIONS ON GENETIC TESTING.—Section***  
2 ***702 of the Employee Retirement Income***  
3 ***Security Act of 1974 (29 U.S.C. 1182) is amend-***  
4 ***ed by adding at the end the following:***

5       ***“(c) GENETIC TESTING.—***

6               ***“(1) LIMITATION ON REQUESTING OR RE-***  
7 ***QUIRING GENETIC TESTING.—A group health***  
8 ***plan, or a health insurance issuer offer-***  
9 ***ing health insurance coverage in connec-***  
10 ***tion with a group health plan, shall not***  
11 ***request or require an individual or a fam-***  
12 ***ily member of such individual to undergo***  
13 ***a genetic test.***

14               ***“(2) RULE OF CONSTRUCTION.—Nothing***  
15 ***in this part shall be construed to—***

16                       ***“(A) limit the authority of a***  
17 ***health care professional who is pro-***  
18 ***viding health care services with re-***  
19 ***spect to an individual to request that***  
20 ***such individual or a family member of***  
21 ***such individual undergo a genetic***  
22 ***test;***

23                       ***“(B) limit the authority of a***  
24 ***health care professional who is em-***  
25 ***ployed by or affiliated with a group***

1 *health plan or a health insurance*  
2 *issuer and who is providing health*  
3 *care services to an individual as part*  
4 *of a bona fide wellness program to no-*  
5 *tify such individual of the availability*  
6 *of a genetic test or to provide informa-*  
7 *tion to such individual regarding*  
8 *such genetic test; or*

9 *“(C) authorize or permit a health*  
10 *care professional to require that an*  
11 *individual undergo a genetic test.*

12 *“(d) APPLICATION TO ALL PLANS.—The pro-*  
13 *visions of subsections (a)(1)(F), (b)(3), and (c)*  
14 *shall apply to group health plans and health*  
15 *insurance issuers without regard to section*  
16 *732(a).”.*

17 *(c) REMEDIES AND ENFORCEMENT.—Section*  
18 *502 of the Employee Retirement Income Secu-*  
19 *rity Act of 1974 (29 U.S.C. 1132) is amended by*  
20 *adding at the end the following:*

21 *“(n) ENFORCEMENT OF GENETIC NON-*  
22 *DISCRIMINATION REQUIREMENTS.—*

23 *“(1) INJUNCTIVE RELIEF FOR IRREP-*  
24 *ARABLE HARM.—With respect to any viola-*  
25 *tion of subsection (a)(1)(F), (b)(3), or (c) of*

1 *section 702, a participant or beneficiary*  
2 *may seek relief under subsection*  
3 *502(a)(1)(B) prior to the exhaustion of*  
4 *available administrative remedies under*  
5 *section 503 if it is demonstrated to the*  
6 *court, by a preponderance of the evidence,*  
7 *that the exhaustion of such remedies*  
8 *would cause irreparable harm to the*  
9 *health of the participant or beneficiary.*  
10 *Any determinations that already have*  
11 *been made under section 503 in such case,*  
12 *or that are made in such case while an*  
13 *action under this paragraph is pending,*  
14 *shall be given due consideration by the*  
15 *court in any action under this subsection*  
16 *in such case.*

17 **“(2) EQUITABLE RELIEF FOR GENETIC**  
18 **NONDISCRIMINATION.—**

19 **“(A) REINSTATEMENT OF BENEFITS**  
20 **WHERE EQUITABLE RELIEF HAS BEEN**  
21 **AWARDED.—***The recovery of benefits by*  
22 *a participant or beneficiary under a*  
23 *civil action under this section may in-*  
24 *clude an administrative penalty*  
25 *under subparagraph (B) and the ret-*

1            *roactive reinstatement of coverage*  
2            *under the plan involved to the date on*  
3            *which the participant or beneficiary*  
4            *was denied eligibility for coverage if—*

5                    *“(i) the civil action was com-*  
6                    *menced under subsection*  
7                    *(a)(1)(B); and*

8                    *“(ii) the denial of coverage on*  
9                    *which such civil action was based*  
10                   *constitutes a violation of sub-*  
11                   *section (a)(1)(F), (b)(3), or (c) of*  
12                   *section 702.*

13            *“(B) ADMINISTRATIVE PENALTY.—*

14                   *“(i) IN GENERAL.—An adminis-*  
15                   *trator who fails to comply with the*  
16                   *requirements of subsection*  
17                   *(a)(1)(F), (b)(3), or (c) of section*  
18                   *702 with respect to a participant*  
19                   *or beneficiary may, in an action*  
20                   *commenced under subsection*  
21                   *(a)(1)(B), be personally liable in*  
22                   *the discretion of the court, for a*  
23                   *penalty in the amount not more*  
24                   *than \$100 for each day in the non-*  
25                   *compliance period.*

1           “(ii) **NONCOMPLIANCE PERIOD.**—  
2           *For purposes of clause (i), the*  
3           *term ‘noncompliance period’*  
4           *means the period—*

5                   “(I) *beginning on the date*  
6                   *that a failure described in*  
7                   *clause (i) occurs; and*

8                   “(II) *ending on the date*  
9                   *that such failure is corrected.*

10           “(iii) **PAYMENT TO PARTICIPANT**  
11           **OR BENEFICIARY.**—*A penalty col-*  
12           *lected under this subparagraph*  
13           *shall be paid to the participant or*  
14           *beneficiary involved.*

15           “(3) **SECRETARIAL ENFORCEMENT AU-**  
16           **THORITY.**—

17                   “(A) **GENERAL RULE.**—*The Sec-*  
18                   *retary has the authority to impose a*  
19                   *penalty on any failure of a group*  
20                   *health plan to meet the requirements*  
21                   *of subsection (a)(1)(F), (b)(3), or (c) of*  
22                   *section 702.*

23                   “(B) **AMOUNT.**—

24                   “(i) **IN GENERAL.**—*The amount*  
25                   *of the penalty imposed by sub-*

1           *paragraph (A) shall be \$100 for*  
2           *each day in the noncompliance pe-*  
3           *riod with respect to each indi-*  
4           *vidual to whom such failure re-*  
5           *lates.*

6           “(i) *NONCOMPLIANCE PERIOD.—*  
7           *For purposes of this paragraph,*  
8           *the term ‘noncompliance period’*  
9           *means, with respect to any failure,*  
10          *the period—*

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

13                  “(II) *ending on the date*  
14                  *such failure is corrected.*

15          “(C) *MINIMUM PENALTIES WHERE*  
16          *FAILURE           DISCOVERED.—Notwith-*  
17          *standing clauses (i) and (ii) of sub-*  
18          *paragraph (D):*

19                  “(i) *IN GENERAL.—In the case of*  
20                  *1 or more failures with respect to*  
21                  *an individual—*

22                  “(I) *which are not cor-*  
23                  *rected before the date on*  
24                  *which the plan receives a no-*

1           *tice from the Secretary of such*  
2           *violation; and*

3           “(II) *which occurred or*  
4           *continued during the period*  
5           *involved;*

6           *the amount of penalty imposed by*  
7           *subparagraph (A) by reason of*  
8           *such failures with respect to such*  
9           *individual shall not be less than*  
10          *\$2,500.*

11          “(i) *HIGHER MINIMUM PENALTY*  
12          *WHERE VIOLATIONS ARE MORE THAN*  
13          *DE MINIMIS.—To the extent viola-*  
14          *tions for which any person is lia-*  
15          *ble under this paragraph for any*  
16          *year are more than de minimis,*  
17          *clause (i) shall be applied by sub-*  
18          *stituting ‘\$15,000’ for ‘\$2,500’ with*  
19          *respect to such person.*

20          “(D) *LIMITATIONS.—*

21          “(i) *PENALTY NOT TO APPLY*  
22          *WHERE FAILURE NOT DISCOVERED EX-*  
23          *ERCISING REASONABLE DILIGENCE.—*  
24          *No penalty shall be imposed by*  
25          *subparagraph (A) on any failure*

1           *during any period for which it is*  
2           *established to the satisfaction of*  
3           *the Secretary that the person oth-*  
4           *erwise liable for such penalty did*  
5           *not know, and exercising reason-*  
6           *able diligence would not have*  
7           *known, that such failure existed.*

8           “(ii) *PENALTY NOT TO APPLY TO*  
9           *FAILURES CORRECTED WITHIN CER-*  
10           *TAIN PERIODS.—No penalty shall be*  
11           *imposed by subparagraph (A) on*  
12           *any failure if—*

13                   “(I) *such failure was due*  
14                   *to reasonable cause and not to*  
15                   *willful neglect; and*

16                   “(II) *such failure is cor-*  
17                   *rected during the 30-day pe-*  
18                   *riod beginning on the first*  
19                   *date the person otherwise lia-*  
20                   *ble for such penalty knew, or*  
21                   *exercising reasonable dili-*  
22                   *gence would have known, that*  
23                   *such failure existed.*

24           “(iii) *OVERALL LIMITATION FOR*  
25           *UNINTENTIONAL FAILURES.—In the*

1           *case of failures which are due to*  
2           *reasonable cause and not to will-*  
3           *ful neglect, the penalty imposed by*  
4           *subparagraph (A) for failures*  
5           *shall not exceed the amount equal*  
6           *to the lesser of—*

7                   “(I) 10 percent of the ag-

8                   gregate amount paid or in-

9                   curred by the employer (or

10                  predecessor employer) during

11                  the preceding taxable year for

12                  group health plans; or

13                   “(II) \$500,000.

14                  “(E) *WAIVER BY SECRETARY.—In the*

15                  *case of a failure which is due to rea-*

16                  *sonable cause and not to willful ne-*

17                  *glect, the Secretary may waive part or*

18                  *all of the penalty imposed by subpara-*

19                  *graph (A) to the extent that the pay-*

20                  *ment of such penalty would be exces-*

21                  *sive relative to the failure involved.”.*

22                  “(d) *DEFINITIONS.—Section 733(d) of the Em-*

23                  *ployee Retirement Income Security Act of 1974*

24                  *(29 U.S.C. 1191b(d)) is amended by adding at*

25                  *the end the following:*

1           “(5) *FAMILY MEMBER.*—*The term ‘family*  
2 *member’ means with respect to an indi-*  
3 *vidual—*

4                   “(A) *the spouse of the individual;*

5                   “(B) *a dependent child of the indi-*  
6 *vidual, including a child who is born*  
7 *to or placed for adoption with the in-*  
8 *dividual; and*

9                   “(C) *all other individuals related*  
10 *by blood to the individual or the*  
11 *spouse or child described in subpara-*  
12 *graph (A) or (B).*

13           “(6) *GENETIC INFORMATION.*—

14                   “(A) *IN GENERAL.*—*Except as pro-*  
15 *vided in subparagraph (B), the term*  
16 *‘genetic information’ means informa-*  
17 *tion about—*

18                           “(i) *an individual’s genetic*  
19 *tests;*

20                           “(ii) *the genetic tests of family*  
21 *members of the individual; or*

22                           “(iii) *the occurrence of a dis-*  
23 *ease or disorder in family mem-*  
24 *bers of the individual.*

1           “(B) *EXCLUSIONS.*—*The term ‘ge-*  
2           *netic information’ shall not include*  
3           *information about the sex or age of an*  
4           *individual.*

5           “(7) *GENETIC TEST.*—

6           “(A) *IN GENERAL.*—*The term ‘ge-*  
7           *netic test’ means an analysis of*  
8           *human DNA, RNA, chromosomes, pro-*  
9           *teins, or metabolites, that detects*  
10           *genotypes, mutations, or chromosomal*  
11           *changes.*

12           “(B) *EXCEPTIONS.*—*The term ‘ge-*  
13           *netic test’ does not mean—*

14                   “(i) *an analysis of proteins or*  
15                   *metabolites that does not detect*  
16                   *genotypes, mutations, or chromo-*  
17                   *somal changes; or*

18                   “(ii) *an analysis of proteins or*  
19                   *metabolites that is directly related*  
20                   *to a manifested disease, disorder,*  
21                   *or pathological condition that*  
22                   *could reasonably be detected by a*  
23                   *health care professional with ap-*  
24                   *propriate training and expertise*  
25                   *in the field of medicine involved.*

1           **“(8) GENETIC SERVICES.—The term ‘ge-**  
2           **netic services’ means—**

3                   **“(A) a genetic test;**

4                   **“(B) genetic counseling (such as**  
5                   **obtaining, interpreting, or assessing**  
6                   **genetic information); or**

7                   **“(C) genetic education.”.**

8           **(e) REGULATIONS AND EFFECTIVE DATE.—**

9                   **(1) REGULATIONS.—Not later than 1**  
10                  **year after the date of enactment of this**  
11                  **title, the Secretary of Labor shall issue**  
12                  **final regulations in an accessible format**  
13                  **to carry out the amendments made by this**  
14                  **section.**

15                  **(2) EFFECTIVE DATE.—The amendments**  
16                  **made by this section shall apply with re-**  
17                  **spect to group health plans for plan years**  
18                  **beginning after the date that is 18 months**  
19                  **after the date of enactment of this title.**

20           **SEC. 102. AMENDMENTS TO THE PUBLIC HEALTH SERVICE**  
21                           **ACT.**

22                   **(a) AMENDMENTS RELATING TO THE GROUP**  
23                   **MARKET.—**

1           **(1) PROHIBITION OF HEALTH DISCRIMINA-**  
2           **TION ON THE BASIS OF GENETIC INFORMATION**  
3           **OR GENETIC SERVICES.—**

4           **(A) NO ENROLLMENT RESTRICTION**  
5           **FOR GENETIC SERVICES.—Section**  
6           **2702(a)(1)(F) of the Public Health**  
7           **Service Act (42 U.S.C. 300gg-**  
8           **1(a)(1)(F)) is amended by inserting be-**  
9           **fore the period the following: “(includ-**  
10           **ing information about a request for or**  
11           **receipt of genetic services by an indi-**  
12           **vidual or family member of such indi-**  
13           **vidual)”.**

14           **(B) NO DISCRIMINATION IN GROUP**  
15           **PREMIUMS BASED ON GENETIC INFORMA-**  
16           **TION.—Section 2702(b) of the Public**  
17           **Health Service Act (42 U.S.C. 300gg-**  
18           **1(b)) is amended—**

19                   **(i) in paragraph (2)(A), by in-**  
20                   **serting before the semicolon the**  
21                   **following: “, except as provided in**  
22                   **paragraph (3)”;** and

23                   **(ii) by adding at the end the**  
24                   **following:**

1           **“(3) NO DISCRIMINATION IN GROUP PRE-**  
2           **MIUMS BASED ON GENETIC INFORMATION.—**

3           ***For purposes of this section, a group***  
4           ***health plan, or a health insurance issuer***  
5           ***offering group health insurance coverage***  
6           ***in connection with a group health plan,***  
7           ***shall not adjust premium or contribution***  
8           ***amounts for a group on the basis of ge-***  
9           ***netic information concerning an indi-***  
10           ***vidual in the group or a family member of***  
11           ***the individual (including information***  
12           ***about a request for or receipt of genetic***  
13           ***services by an individual or family mem-***  
14           ***ber of such individual).”.***

15           **(2) LIMITATIONS ON GENETIC TESTING.—**

16           ***Section 2702 of the Public Health Service***  
17           ***Act (42 U.S.C. 300gg-1) is amended by***  
18           ***adding at the end the following:***

19           **“(c) GENETIC TESTING.—**

20           ***(1) LIMITATION ON REQUESTING OR RE-***  
21           ***QUIRING GENETIC TESTING.—A group health***  
22           ***plan, or a health insurance issuer offer-***  
23           ***ing health insurance coverage in connec-***  
24           ***tion with a group health plan, shall not***  
25           ***request or require an individual or a fam-***

1 *ily member of such individual to undergo*  
2 *a genetic test.*

3 **“(2) CERTAIN RULES OF CONSTRUC-**  
4 ***TION.—Nothing in this part shall be con-***  
5 ***strued to—***

6 **“(A) *limit the authority of a***  
7 ***health care professional who is pro-***  
8 ***viding health care services with re-***  
9 ***spect to an individual to request that***  
10 ***such individual or a family member of***  
11 ***such individual undergo a genetic***  
12 ***test;***

13 **“(B) *limit the authority of a***  
14 ***health care professional who is em-***  
15 ***ployed by or affiliated with a group***  
16 ***health plan or a health insurance***  
17 ***issuer and who is providing health***  
18 ***care services to an individual as part***  
19 ***of a bona fide wellness program to no-***  
20 ***tify such individual of the availability***  
21 ***of a genetic test or to provide informa-***  
22 ***tion to such individual regarding***  
23 ***such genetic test; or***

1           “(C) *authorize or permit a health*  
2           *care professional to require that an*  
3           *individual undergo a genetic test.*

4           “(3) *RULE OF CONSTRUCTION REGARDING*  
5           *PAYMENT.—*

6           “(A) *IN GENERAL.—Subject to sub-*  
7           *paragraph (B), nothing in paragraph*  
8           *(1) shall be construed to preclude a*  
9           *group health plan, or a health insur-*  
10           *ance issuer offering health insurance*  
11           *coverage in connection with a group*  
12           *health plan, from conditioning pay-*  
13           *ment on obtaining the results of a ge-*  
14           *netic test or informing members of*  
15           *such policies. For purpose of the pre-*  
16           *ceding sentence, the term ‘payment’*  
17           *includes reimbursement, billing,*  
18           *claims management, claims adjudica-*  
19           *tion, review of health care services*  
20           *with respect to medical necessity, cov-*  
21           *erage under a health plan, appro-*  
22           *priateness of care, or justification of*  
23           *charges, and utilization review (in-*  
24           *cluding precertification, prior author-*

1           *ization, concurrent and retrospective*  
2           *review).*

3           “(B) *LIMITATION.—For purposes of*  
4           *subparagraph (A), a group health*  
5           *plan, or a health insurance issuer of-*  
6           *fering health insurance coverage in*  
7           *connection with a group health plan,*  
8           *may request only the minimum*  
9           *amount of information necessary to*  
10           *accomplish the intended purpose.*

11           “(d) *APPLICATION TO ALL PLANS.—The pro-*  
12           *visions of subsections (a)(1)(F), (b)(3), and (c)*  
13           *shall apply to group health plans and health*  
14           *insurance issuers without regard to section*  
15           *2721(a).*

16           “(e) *GENETIC INFORMATION OF A FETUS OR*  
17           *EMBRYO.—Any reference in this section to ge-*  
18           *netic information concerning an individual or*  
19           *family member of an individual shall—*

20           “(1) *with respect to such an indi-*  
21           *vidual or family member of an individual*  
22           *who is a pregnant woman, include genetic*  
23           *information of any fetus carried by such*  
24           *pregnant woman; and*

1           “(2) *with respect to an individual or*  
2 *family member utilizing an assisted re-*  
3 *productive technology, include genetic in-*  
4 *formation of any embryo legally held by*  
5 *the individual or family member.”.*

6           **(3) REMEDIES AND ENFORCEMENT.—***Sec-*  
7 *tion 2722(b) of the Public Health Service*  
8 *Act (42 U.S.C. 300gg–22(b)) is amended by*  
9 *adding at the end the following:*

10           **“(3) ENFORCEMENT AUTHORITY RELATING**  
11 **TO GENETIC DISCRIMINATION.—**

12           **“(A) GENERAL RULE.—***In the cases*  
13 *described in paragraph (1), notwith-*  
14 *standing the provisions of paragraph*  
15 *(2)(C), the following provisions shall*  
16 *apply with respect to an action under*  
17 *this subsection by the Secretary with*  
18 *respect to any failure of a health in-*  
19 *surance issuer in connection with a*  
20 *group health plan, to meet the re-*  
21 *quirements of subsection (a)(1)(F),*  
22 *(b)(3), or (c) of section 2702 or section*  
23 *2701 or 2702(b)(1) with respect to ge-*  
24 *netic information.*

25           **“(B) AMOUNT.—**

1           “(i) *IN GENERAL.*—*The amount*  
2           *of the penalty imposed under this*  
3           *paragraph shall be \$100 for each*  
4           *day in the noncompliance period*  
5           *with respect to each individual to*  
6           *whom such failure relates.*

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

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

14                   “(II) *ending on the date*  
15                   *such failure is corrected.*

16           “(C) *MINIMUM PENALTIES WHERE*  
17           *FAILURE           DISCOVERED.*—*Notwith-*  
18           *standing clauses (i) and (ii) of sub-*  
19           *paragraph (D):*

20                   “(i) *IN GENERAL.*—*In the case of*  
21                   *1 or more failures with respect to*  
22                   *an individual—*

23                           “(I) *which are not cor-*  
24                           *rected before the date on*  
25                           *which the plan receives a no-*

1           *tice from the Secretary of such*  
2           *violation; and*

3           “(II) *which occurred or*  
4           *continued during the period*  
5           *involved;*

6           *the amount of penalty imposed by*  
7           *subparagraph (A) by reason of*  
8           *such failures with respect to such*  
9           *individual shall not be less than*  
10          *\$2,500.*

11          “(i) *HIGHER MINIMUM PENALTY*  
12          *WHERE VIOLATIONS ARE MORE THAN*  
13          *DE MINIMIS.—To the extent viola-*  
14          *tions for which any person is lia-*  
15          *ble under this paragraph for any*  
16          *year are more than de minimis,*  
17          *clause (i) shall be applied by sub-*  
18          *stituting ‘\$15,000’ for ‘\$2,500’ with*  
19          *respect to such person.*

20          “(D) *LIMITATIONS.—*

21          “(i) *PENALTY NOT TO APPLY*  
22          *WHERE FAILURE NOT DISCOVERED EX-*  
23          *ERCISING REASONABLE DILIGENCE.—*  
24          *No penalty shall be imposed by*  
25          *subparagraph (A) on any failure*

1           *during any period for which it is*  
2           *established to the satisfaction of*  
3           *the Secretary that the person oth-*  
4           *erwise liable for such penalty did*  
5           *not know, and exercising reason-*  
6           *able diligence would not have*  
7           *known, that such failure existed.*

8           “(ii) *PENALTY NOT TO APPLY TO*  
9           *FAILURES CORRECTED WITHIN CER-*  
10           *TAIN PERIODS.—No penalty shall be*  
11           *imposed by subparagraph (A) on*  
12           *any failure if—*

13                   “(I) *such failure was due*  
14                   *to reasonable cause and not to*  
15                   *willful neglect; and*

16                   “(II) *such failure is cor-*  
17                   *rected during the 30-day pe-*  
18                   *riod beginning on the first*  
19                   *date the person otherwise lia-*  
20                   *ble for such penalty knew, or*  
21                   *exercising reasonable dili-*  
22                   *gence would have known, that*  
23                   *such failure existed.*

24           “(iii) *OVERALL LIMITATION FOR*  
25           *UNINTENTIONAL FAILURES.—In the*

1           *case of failures which are due to*  
2           *reasonable cause and not to will-*  
3           *ful neglect, the penalty imposed by*  
4           *subparagraph (A) for failures*  
5           *shall not exceed the amount equal*  
6           *to the lesser of—*

7                   “(I) 10 percent of the ag-

8                   gregate amount paid or in-

9                   curred by the employer (or

10                  predecessor employer) during

11                  the preceding taxable year for

12                  group health plans; or

13                   “(II) \$500,000.

14                  “(E) *WAIVER BY SECRETARY.—In the*

15                  *case of a failure which is due to rea-*

16                  *sonable cause and not to willful ne-*

17                  *glect, the Secretary may waive part or*

18                  *all of the penalty imposed by subpara-*

19                  *graph (A) to the extent that the pay-*

20                  *ment of such penalty would be exces-*

21                  *sive relative to the failure involved.”.*

22                  “(4) *DEFINITIONS.—Section 2791(d) of*

23                  *the Public Health Service Act (42 U.S.C.*

24                  *300gg-91(d)) is amended by adding at the*

25                  *end the following:*

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

2  
3  
4           “(A) *a dependent (as such term is used for purposes of section 2701(f)(2)) of such individual; and*

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

8  
9  
10           “(16) *GENETIC INFORMATION.*—

11           “(A) *IN GENERAL.*—*The term ‘genetic information’ means information about—*

12  
13           “(i) *an individual’s genetic tests;*

14           “(ii) *the genetic tests of family members of the individual; or*

15           “(iii) *the occurrence of a disease or disorder in family members of the individual.*

16  
17  
18           “(B) *INCLUSION OF GENETIC SERVICES AND PARTICIPATION IN GENETIC RESEARCH.*—*Such term includes, with re-*

1 *spect to any individual, any request*  
2 *for genetic services, receipt of genetic*  
3 *services, or participation in any clin-*  
4 *ical research, or any other program,*  
5 *which includes genetic services, by*  
6 *such individual or any family member*  
7 *of such individual.*

8 “(C) *EXCLUSIONS.—The term ‘ge-*  
9 *netic information’ shall not include*  
10 *information about the sex or age of an*  
11 *individual.*

12 “(17) *GENETIC TEST.—*

13 “(A) *IN GENERAL.—The term ‘ge-*  
14 *netic test’ means an analysis of*  
15 *human DNA, RNA, chromosomes, pro-*  
16 *teins, or metabolites, that detects*  
17 *genotypes, mutations, or chromosomal*  
18 *changes.*

19 “(B) *EXCEPTIONS.—The term ‘ge-*  
20 *netic test’ does not mean—*

21 “(i) *an analysis of proteins or*  
22 *metabolites that does not detect*  
23 *genotypes, mutations, or chromo-*  
24 *somal changes; or*

1           “(ii) *an analysis of proteins or*  
2           *metabolites that is directly related*  
3           *to a manifested disease, disorder,*  
4           *or pathological condition that*  
5           *could reasonably be detected by a*  
6           *health care professional with ap-*  
7           *propriate training and expertise*  
8           *in the field of medicine involved.*

9           “(18) *GENETIC SERVICES.—The term ‘ge-*  
10          *netic services’ means—*

11           “(A) *a genetic test;*

12           “(B) *genetic counseling (such as*  
13           *obtaining, interpreting, or assessing*  
14           *genetic information); or*

15           “(C) *genetic education.”.*

16          “(b) *AMENDMENT RELATING TO THE INDI-*  
17          *VIDUAL MARKET.—*

18           “(1) *IN GENERAL.—The first subpart 3 of*  
19           *part B of title XXVII of the Public Health*  
20           *Service Act (42 U.S.C. 300gg-51 et seq.)*  
21           *(relating to other requirements) is amend-*  
22           *ed—*

23           “(A) *by redesignating such subpart*  
24           *as subpart 2; and*

1                   **(B) by adding at the end the fol-**  
2                   **lowing:**

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

5                   **“(a) PROHIBITION ON GENETIC INFORMATION**  
6 **AS A CONDITION OF ELIGIBILITY.—A health in-**  
7 **surance issuer offering health insurance cov-**  
8 **erage in the individual market may not estab-**  
9 **lish rules for the eligibility (including contin-**  
10 **ued eligibility) of any individual to enroll in**  
11 **individual health insurance coverage based**  
12 **on genetic information (including information**  
13 **about a request for or receipt of genetic serv-**  
14 **ices by an individual or family member of such**  
15 **individual).**

16                   **“(b) PROHIBITION ON GENETIC INFORMATION**  
17 **IN SETTING PREMIUM RATES.—A health insur-**  
18 **ance issuer offering health insurance coverage**  
19 **in the individual market shall not adjust pre-**  
20 **mium or contribution amounts for an indi-**  
21 **vidual on the basis of genetic information con-**  
22 **cerning the individual or a family member of**  
23 **the individual (including information about a**  
24 **request for or receipt of genetic services by an**

1 *individual or family member of such indi-*  
2 *vidual).*

3       “(c) **PROHIBITION ON GENETIC INFORMATION**  
4 **AS PREEXISTING CONDITION.**—A *health insur-*  
5 *ance issuer offering health insurance coverage*  
6 *in the individual market may not, on the basis*  
7 *of genetic information (including information*  
8 *about a request for or receipt of genetic serv-*  
9 *ices by an individual or family member of such*  
10 *individual), impose any preexisting condition*  
11 *exclusion (as defined in section 2701(b)(1)(A))*  
12 *with respect to such coverage.*

13       “(d) **GENETIC TESTING.**—

14               “(1) **LIMITATION ON REQUESTING OR RE-**  
15 **QUIRING GENETIC TESTING.**—A *health insur-*  
16 *ance issuer offering health insurance cov-*  
17 *erage in the individual market shall not*  
18 *request or require an individual or a fam-*  
19 *ily member of such individual to undergo*  
20 *a genetic test.*

21               “(2) **CERTAIN RULES OF CONSTRUC-**  
22 **TION.**—*Nothing in this part shall be con-*  
23 *strued to—*

24                       “(A) *limit the authority of a*  
25 *health care professional who is pro-*

1 *viding health care services with re-*  
2 *spect to an individual to request that*  
3 *such individual or a family member of*  
4 *such individual undergo a genetic*  
5 *test;*

6 *“(B) limit the authority of a*  
7 *health care professional who is em-*  
8 *ployed by or affiliated with a health*  
9 *insurance issuer and who is providing*  
10 *health care services to an individual*  
11 *as part of a bona fide wellness pro-*  
12 *gram to notify such individual of the*  
13 *availability of a genetic test or to pro-*  
14 *vide information to such individual*  
15 *regarding such genetic test; or*

16 *“(C) authorize or permit a health*  
17 *care professional to require that an*  
18 *individual undergo a genetic test.*

19 *“(3) RULE OF CONSTRUCTION REGARDING*  
20 *PAYMENT.—*

21 *“(A) IN GENERAL.—Subject to sub-*  
22 *paragraph (B), nothing in paragraph*  
23 *(1) shall be construed to preclude a*  
24 *health insurance issuer offering*  
25 *health insurance coverage in the indi-*

1 *vidual market from conditioning pay-*  
2 *ment on obtaining the results of a ge-*  
3 *netic test or informing members of*  
4 *such policies. For purpose of the pre-*  
5 *ceding sentence, the term ‘payment’*  
6 *includes reimbursement, billing,*  
7 *claims management, claims adjudica-*  
8 *tion, review of health care services*  
9 *with respect to medical necessity, cov-*  
10 *erage under a health plan, appro-*  
11 *priateness of care, or justification of*  
12 *charges, and utilization review (in-*  
13 *cluding precertification, prior author-*  
14 *ization, concurrent and retrospective*  
15 *review).*

16 *“(B) LIMITATION.—For purposes of*  
17 *subparagraph (A), a health insurance*  
18 *issuer offering health insurance cov-*  
19 *erage in the individual market may*  
20 *request only the minimum amount of*  
21 *information necessary to accomplish*  
22 *the intended purpose.*

23 *“(e) GENETIC INFORMATION OF A FETUS OR*  
24 *EMBRYO.—Any reference in this section to ge-*

1 *netic information concerning an individual or*  
2 *family member of an individual shall—*

3 *“(1) with respect to such an indi-*  
4 *vidual or family member of an individual*  
5 *who is a pregnant woman, include genetic*  
6 *information of any fetus carried by such*  
7 *pregnant woman; and*

8 *“(2) with respect to an individual or*  
9 *family member utilizing an assisted re-*  
10 *productive technology, include genetic in-*  
11 *formation of any embryo legally held by*  
12 *the individual or family member.”.*

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

17 *“(b) SECRETARIAL ENFORCEMENT AUTHOR-*  
18 *ITY.—The Secretary shall have the same au-*  
19 *thority in relation to enforcement of the provi-*  
20 *sions of this part with respect to issuers of*  
21 *health insurance coverage in the individual*  
22 *market in a State as the Secretary has under*  
23 *section 2722(b)(2), and section 2722(b)(3) with*  
24 *respect to violations of genetic nondiscrimina-*  
25 *tion provisions, in relation to the enforcement*

1 *of the provisions of part A with respect to*  
2 *issuers of health insurance coverage in the*  
3 *small group market in the State.”.*

4 (c) *ELIMINATION OF OPTION OF NON-FED-*  
5 *ERAL GOVERNMENTAL PLANS TO BE EXCEPTED*  
6 *FROM REQUIREMENTS CONCERNING GENETIC IN-*  
7 *FORMATION.—Section 2721(b)(2) of the Public*  
8 *Health Service Act (42 U.S.C. 300gg–21(b)(2)) is*  
9 *amended—*

10 (1) *in subparagraph (A), by striking*  
11 *“If the plan sponsor” and inserting “Ex-*  
12 *cept as provided in subparagraph (D), if*  
13 *the plan sponsor”; and*

14 (2) *by adding at the end the following:*

15 (D) *ELECTION NOT APPLICABLE TO*  
16 *REQUIREMENTS CONCERNING GENETIC IN-*  
17 *FORMATION.—The election described in*  
18 *subparagraph (A) shall not be avail-*  
19 *able with respect to the provisions of*  
20 *subsections (a)(1)(F) and (c) of section*  
21 *2702 and the provisions of section*  
22 *2702(b) to the extent that such provi-*  
23 *sions apply to genetic information (or*  
24 *information about a request for or the*  
25 *receipt of genetic services by an indi-*

1           *vidual or a family member of such in-*  
2           *dividual).”.*

3           ***(d) REGULATIONS AND EFFECTIVE DATE.—***

4           ***(1) REGULATIONS.—Not later than 1***  
5           ***year after the date of enactment of this***  
6           ***title, the Secretary of Labor and the Sec-***  
7           ***retary of Health and Human Services (as***  
8           ***the case may be) shall issue final regula-***  
9           ***tions in an accessible format to carry out***  
10           ***the amendments made by this section.***

11           ***(2) EFFECTIVE DATE.—The amendments***  
12           ***made by this section shall apply—***

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

19                   ***(B) with respect to health insur-***  
20                   ***ance coverage offered, sold, issued, re-***  
21                   ***newed, in effect, or operated in the in-***  
22                   ***dividual market after the date that is***  
23                   ***18 months after the date of enactment***  
24                   ***of this title.***

1 *SEC. 103. AMENDMENTS TO TITLE XVIII OF THE SOCIAL SE-*  
2 *CURITY ACT RELATING TO MEDIGAP.*

3 *(a) NONDISCRIMINATION.—*

4 *(1) IN GENERAL.—Section 1882(s)(2) of*  
5 *the Social Security Act (42 U.S.C.*  
6 *1395ss(s)(2)) is amended by adding at the*  
7 *end the following:*

8 *“(E)(i) An issuer of a medicare*  
9 *supplemental policy shall not deny or*  
10 *condition the issuance or effectiveness*  
11 *of the policy, and shall not discrimi-*  
12 *nate in the pricing of the policy (in-*  
13 *cluding the adjustment of premium*  
14 *rates) of an eligible individual on the*  
15 *basis of genetic information con-*  
16 *cerning the individual (or informa-*  
17 *tion about a request for, or the receipt*  
18 *of, genetic services by such individual*  
19 *or family member of such individual).*

20 *“(ii) For purposes of clause (i), the*  
21 *terms ‘family member’, ‘genetic serv-*  
22 *ices’, and ‘genetic information’ shall*  
23 *have the meanings given such terms*  
24 *in subsection (x).”.*

25 *(2) EFFECTIVE DATE.—The amendment*  
26 *made by paragraph (1) shall apply with*

1 *respect to a policy for policy years begin-*  
2 *ning after the date that is 18 months after*  
3 *the date of enactment of this Act.*

4 ***(b) LIMITATIONS ON GENETIC TESTING.—***

5 ***(1) IN GENERAL.—Section 1882 of the***  
6 ***Social Security Act (42 U.S.C. 1395ss) is***  
7 ***amended by adding at the end the fol-***  
8 ***lowing:***

9 ***“(x) LIMITATIONS ON GENETIC TESTING.—***

10 ***“(1) GENETIC TESTING.—***

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

17 ***“(B) RULE OF CONSTRUCTION.—***  
18 ***Nothing in this title shall be con-***  
19 ***strued to—***

20 ***“(i) limit the authority of a***  
21 ***health care professional who is***  
22 ***providing health care services***  
23 ***with respect to an individual to***  
24 ***request that such individual or a***

1 *family member of such individual*  
2 *undergo a genetic test;*

3 *“(ii) limit the authority of a*  
4 *health care professional who is*  
5 *employed by or affiliated with an*  
6 *issuer of a medicare supplemental*  
7 *policy and who is providing*  
8 *health care services to an indi-*  
9 *vidual as part of a bona fide*  
10 *wellness program to notify such*  
11 *individual of the availability of a*  
12 *genetic test or to provide informa-*  
13 *tion to such individual regarding*  
14 *such genetic test; or*

15 *“(iii) authorize or permit a*  
16 *health care professional to require*  
17 *that an individual undergo a ge-*  
18 *netic test.*

19 **“(2) DEFINITIONS.—In this subsection:**

20 **“(A) FAMILY MEMBER.—The term**  
21 **‘family member’ means with respect to**  
22 **an individual—**

23 **“(i) the spouse of the indi-**  
24 **vidual;**

1           “(ii) *a dependent child of the*  
2 *individual, including a child who*  
3 *is born to or placed for adoption*  
4 *with the individual; or*

5           “(iii) *any other individuals re-*  
6 *lated by blood to the individual or*  
7 *to the spouse or child described in*  
8 *clause (i) or (ii).*

9           “(B) *GENETIC INFORMATION.—*

10           “(i) *IN GENERAL.—Except as*  
11 *provided in clause (ii), the term*  
12 *‘genetic information’ means infor-*  
13 *mation about—*

14           “(I) *an individual’s ge-*  
15 *netic tests;*

16           “(II) *the genetic tests of*  
17 *family members of the indi-*  
18 *vidual; or*

19           “(III) *the occurrence of a*  
20 *disease or disorder in family*  
21 *members of the individual.*

22           “(ii) *EXCLUSIONS.—The term*  
23 *‘genetic information’ shall not in-*  
24 *clude information about the sex or*  
25 *age of an individual.*

1                   **“(C) GENETIC TEST.—**

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

8                   **“(ii) EXCEPTIONS.—The term**  
9                   **‘genetic test’ does not mean—**

10                   **“(I) an analysis of proteins**  
11                   **or metabolites that does not**  
12                   **detect genotypes, mutations, or**  
13                   **chromosomal changes; or**

14                   **“(II) an analysis of pro-**  
15                   **teins or metabolites that is di-**  
16                   **rectly related to a manifested**  
17                   **disease, disorder, or patholog-**  
18                   **ical condition that could rea-**  
19                   **sonably be detected by a**  
20                   **health care professional with**  
21                   **appropriate training and ex-**  
22                   **pertise in the field of medicine**  
23                   **involved.**

24                   **“(D) GENETIC SERVICES.—The term**  
25                   **‘genetic services’ means—**

1           “(i) a genetic test;

2           “(ii) genetic counseling (such  
3           as obtaining, interpreting, or as-  
4           sessing genetic information); or

5           “(iii) genetic education.

6           “(E) ISSUER OF A MEDICARE SUPPLE-  
7           MENTAL POLICY.—The term ‘issuer of a  
8           medicare supplemental policy’ in-  
9           cludes a third-party administrator or  
10          other person acting for or on behalf of  
11          such issuer.”.

12          (2) CONFORMING AMENDMENT.—Section  
13          1882(o) of the Social Security Act (42  
14          U.S.C. 1395ss(o)) is amended by adding at  
15          the end the following:

16                 “(4) The issuer of the medicare supple-  
17                 mental policy complies with subsection  
18                 (s)(2)(E) and subsection (x).”.

19          (3) EFFECTIVE DATE.—The amendments  
20          made by this subsection shall apply with  
21          respect to an issuer of a medicare supple-  
22          mental policy for policy years beginning  
23          on or after the date that is 18 months  
24          after the date of enactment of this Act.

25          (c) TRANSITION PROVISIONS.—

1           ***(1) IN GENERAL.—If the Secretary of***  
2           ***Health and Human Services identifies a***  
3           ***State as requiring a change to its statutes***  
4           ***or regulations to conform its regulatory***  
5           ***program to the changes made by this sec-***  
6           ***tion, the State regulatory program shall***  
7           ***not be considered to be out of compliance***  
8           ***with the requirements of section 1882 of***  
9           ***the Social Security Act due solely to fail-***  
10          ***ure to make such change until the date***  
11          ***specified in paragraph (4).***

12           ***(2) NAIC STANDARDS.—If, not later***  
13          ***than June 30, 2008, the National Associa-***  
14          ***tion of Insurance Commissioners (in this***  
15          ***subsection referred to as the “NAIC”)***  
16          ***modifies its NAIC Model Regulation relat-***  
17          ***ing to section 1882 of the Social Security***  
18          ***Act (referred to in such section as the 1991***  
19          ***NAIC Model Regulation, as subsequently***  
20          ***modified) to conform to the amendments***  
21          ***made by this section, such revised regula-***  
22          ***tion incorporating the modifications shall***  
23          ***be considered to be the applicable NAIC***  
24          ***model regulation (including the revised***  
25          ***NAIC model regulation and the 1991***

1 *NAIC Model Regulation) for the purposes*  
2 *of such section.*

3 (3) *SECRETARY STANDARDS.—If the*  
4 *NAIC does not make the modifications de-*  
5 *scribed in paragraph (2) within the pe-*  
6 *riod specified in such paragraph, the Sec-*  
7 *retary of Health and Human Services*  
8 *shall, not later than October 1, 2008,*  
9 *make the modifications described in such*  
10 *paragraph and such revised regulation*  
11 *incorporating the modifications shall be*  
12 *considered to be the appropriate regula-*  
13 *tion for the purposes of such section.*

14 (4) *DATE SPECIFIED.—*

15 (A) *IN GENERAL.—Subject to sub-*  
16 *paragraph (B), the date specified in*  
17 *this paragraph for a State is the ear-*  
18 *lier of—*

19 (i) *the date the State changes*  
20 *its statutes or regulations to con-*  
21 *form its regulatory program to the*  
22 *changes made by this section, or*

23 (ii) *October 1, 2008.*

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

4                   **(i) requiring State legislation**  
5                   **(other than legislation appro-**  
6                   **priating funds) to conform its reg-**  
7                   **ulatory program to the changes**  
8                   **made in this section, but**

9                   **(ii) having a legislature which**  
10                   **is not scheduled to meet in 2008 in**  
11                   **a legislative session in which such**  
12                   **legislation may be considered, the**  
13                   **date specified in this paragraph is**  
14                   **the first day of the first calendar**  
15                   **quarter beginning after the close**  
16                   **of the first legislative session of**  
17                   **the State legislature that begins**  
18                   **on or after July 1, 2008. For pur-**  
19                   **poses of the previous sentence, in**  
20                   **the case of a State that has a 2-**  
21                   **year legislative session, each year**  
22                   **of such session shall be deemed to**  
23                   **be a separate regular session of**  
24                   **the State legislature.**

1 **SEC. 104. PRIVACY AND CONFIDENTIALITY.**

2       **(a) APPLICABILITY.—***Except as provided in*  
3 *subsection (d), the provisions of this section*  
4 *shall apply to group health plans and health*  
5 *insurance issuers that offers group health in-*  
6 *surance coverage in connection with a group*  
7 *health plan, without regard to—*

8               **(1) section 732(a) of the Employee Re-**  
9 **tirement Income Security Act of 1974 (29**  
10 **U.S.C. 1191a(a));**

11               **(2) section 9831(a)(2) of the Internal**  
12 **Revenue Code of 1986.**

13       **(b) COMPLIANCE WITH CERTAIN CONFIDEN-**  
14 **TIALITY STANDARDS WITH RESPECT TO GENETIC**  
15 **INFORMATION.—**

16               **(1) IN GENERAL.—***The regulations pro-*  
17 *mulgated by the Secretary of Health and*  
18 *Human Services under part C of title XI of*  
19 *the Social Security Act (42 U.S.C. 1320d et*  
20 *seq.) and section 264 of the Health Insur-*  
21 *ance Portability and Accountability Act of*  
22 *1996 (42 U.S.C. 1320d–2 note) shall apply*  
23 *to the use or disclosure of genetic infor-*  
24 *mation by a group health plan or by a*  
25 *health insurance issuer that offers group*

1 *health insurance coverage in connection*  
2 *with a group health plan.*

3 (2) **PROHIBITION ON UNDERWRITING AND**  
4 **PREMIUM RATING.**—*Notwithstanding para-*  
5 *graph (1), a group health plan or a health*  
6 *insurance issuer that offers group health*  
7 *insurance coverage in connection with a*  
8 *group health plan shall not use or dis-*  
9 *close genetic information (including in-*  
10 *formation about a request for or a receipt*  
11 *of genetic services by an individual or*  
12 *family member of such individual) for*  
13 *purposes of underwriting, determinations*  
14 *of eligibility to enroll, premium rating, or*  
15 *the creation, renewal or replacement of a*  
16 *plan, contract or coverage for health in-*  
17 *surance or health benefits.*

18 (c) **PROHIBITION ON COLLECTION OF GENETIC**  
19 **INFORMATION.**—

20 (1) **IN GENERAL.**—*A group health plan*  
21 *or a health insurance issuer that offers*  
22 *group health insurance coverage in con-*  
23 *nection with a group health plan shall*  
24 *not request, require, or purchase genetic*  
25 *information (including information about*

1 *a request for or a receipt of genetic serv-*  
2 *ices by an individual or family member of*  
3 *such individual) for purposes of under-*  
4 *writing, determinations of eligibility to*  
5 *enroll, premium rating, or the creation,*  
6 *renewal or replacement of a plan, con-*  
7 *tract or coverage for health insurance or*  
8 *health benefits.*

9 (2) *LIMITATION RELATING TO THE COL-*  
10 *LECTION OF GENETIC INFORMATION PRIOR TO*  
11 *ENROLLMENT.—A group health plan or a*  
12 *health insurance issuer that offers group*  
13 *health insurance coverage in connection*  
14 *with a group health plan shall not re-*  
15 *quest, require, or purchase genetic infor-*  
16 *mation (including information about a re-*  
17 *quest for or a receipt of genetic services by*  
18 *an individual or family member of such*  
19 *individual) concerning a participant,*  
20 *beneficiary, or enrollee prior to the enroll-*  
21 *ment, and in connection with such enroll-*  
22 *ment, of such individual under the plan*  
23 *or coverage.*

24 (3) *INCIDENTAL COLLECTION.—Where a*  
25 *group health plan obtains or a health in-*

1 *surance issuer that offers group health in-*  
2 *surance coverage in connection with a*  
3 *group health plan genetic information in-*  
4 *cidental to the requesting, requiring, or*  
5 *purchasing of other information con-*  
6 *cerning a participant, beneficiary, or en-*  
7 *rollee, such request, requirement, or pur-*  
8 *chase shall not be considered a violation*  
9 *of this subsection if—*

10 (A) *such request, requirement, or*  
11 *purchase is not in violation of para-*  
12 *graph (1); and*

13 (B) *any genetic information (in-*  
14 *cluding information about a request*  
15 *for or receipt of genetic services) re-*  
16 *quested, required, or purchased is not*  
17 *used or disclosed in violation of sub-*  
18 *section (b).*

19 (d) *APPLICATION OF CONFIDENTIALITY*  
20 *STANDARDS.—The provisions of subsections (b)*  
21 *and (c) shall not apply—*

22 (1) *to group health plans or health in-*  
23 *surance issuers that are not otherwise*  
24 *covered under the regulations promul-*  
25 *gated by the Secretary of Health and*

1 *Human Services under part C of title XI of*  
2 *the Social Security Act (42 U.S.C. 1320d et*  
3 *seq.) and section 264 of the Health Insur-*  
4 *ance Portability and Accountability Act of*  
5 *1996 (42 U.S.C. 1320d–2 note); and*

6 (2) *to genetic information that is not*  
7 *considered to be individually-identifiable*  
8 *health information under the regulations*  
9 *promulgated by the Secretary of Health*  
10 *and Human Services under part C of title*  
11 *XI of the Social Security Act (42 U.S.C.*  
12 *1320d et seq.) and section 264 of the*  
13 *Health Insurance Portability and Ac-*  
14 *countability Act of 1996 (42 U.S.C. 1320d–*  
15 *2 note).*

16 (e) **ENFORCEMENT.**—*A group health plan or*  
17 *a health insurance issuer that offers group*  
18 *health insurance coverage in connection with*  
19 *a group health plan that violates a provision*  
20 *of this section shall be subject to the penalties*  
21 *described in sections 1176 and 1177 of the So-*  
22 *cial Security Act (42 U.S.C. 1320d–5 and*  
23 *1320d–6) in the same manner and to the same*  
24 *extent that such penalties apply to violations*  
25 *of part C of title XI of such Act.*

1       **(f) PREEMPTION.—**

2           **(1) IN GENERAL.—A provision or re-**  
3       **quirement under this section or a regula-**  
4       **tion promulgated under this section shall**  
5       **supersede any contrary provision of State**  
6       **law unless such provision of State law im-**  
7       **poses requirements, standards, or imple-**  
8       **mentation specifications that are more**  
9       **stringent than the requirements, stand-**  
10       **ards, or implementation specifications im-**  
11       **posed under this section or such regula-**  
12       **tions. No penalty, remedy, or cause of ac-**  
13       **tion to enforce such a State law that is**  
14       **more stringent shall be preempted by this**  
15       **section.**

16           **(2) RULE OF CONSTRUCTION.—Nothing**  
17       **in paragraph (1) shall be construed to es-**  
18       **tablish a penalty, remedy, or cause of ac-**  
19       **tion under State law if such penalty, reme-**  
20       **dy, or cause of action is not otherwise**  
21       **available under such State law.**

22       **(g) COORDINATION WITH PRIVACY REGULA-**  
23       **TIONS.—The Secretary shall implement and**  
24       **administer this section in a manner that is**  
25       **consistent with the implementation and ad-**

1 *ministration by the Secretary of the regula-*  
2 *tions promulgated by the Secretary of Health*  
3 *and Human Services under part C of title XI*  
4 *of the Social Security Act (42 U.S.C. 1320d et*  
5 *seq.) and section 264 of the Health Insurance*  
6 *Portability and Accountability Act of 1996 (42*  
7 *U.S.C. 1320d-2 note).*

8 **(h) DEFINITIONS.—In this section:**

9 **(1) GENETIC INFORMATION; GENETIC**  
10 **SERVICES.—The terms “family member”,**  
11 **“genetic information”, “genetic services”,**  
12 **and “genetic test” have the meanings**  
13 **given such terms in section 2791 of the**  
14 **Public Health Service Act (42 U.S.C.**  
15 **300gg-91), as amended by this Act.**

16 **(2) GROUP HEALTH PLAN; HEALTH INSUR-**  
17 **ANCE ISSUER.—The terms “group health**  
18 **plan” and “health insurance issuer” in-**  
19 **clude only those plans and issuers that**  
20 **are covered under the regulations de-**  
21 **scribed in subsection (d)(1).**

22 **(3) SECRETARY.—The term “Secretary”**  
23 **means the Secretary of Health and**  
24 **Human Services.**

1 *SEC. 104A. PRIVACY AND CONFIDENTIALITY.*

2 *(a) PHSA PROVISIONS.—*

3 *(1) GROUP HEALTH PLANS.—*

4 *(A) IN GENERAL.—Title XXVII of*  
5 *the Public Health Service Act is*  
6 *amended by inserting after section*  
7 *2702 the following new section:*

8 *“SEC. 2703. PRIVACY AND CONFIDENTIAL OF GENETIC IN-*  
9 *FORMATION.*

10 *“(a) COMPLIANCE WITH CERTAIN CONFIDEN-*  
11 *TIALITY STANDARDS WITH RESPECT TO GENETIC*  
12 *INFORMATION.—*

13 *“(1) IN GENERAL.—The regulations pro-*  
14 *mulgated by the Secretary under part C of*  
15 *title XI of the Social Security Act (42*  
16 *U.S.C. 1320d et seq.) and section 264 of the*  
17 *Health Insurance Portability and Ac-*  
18 *countability Act of 1996 (42 U.S.C. 1320d-*  
19 *2 note) shall apply to the use or disclosure*  
20 *of genetic information by a group health*  
21 *plan or by an health insurance issuer in*  
22 *connection with health insurance cov-*  
23 *erage offered in connection with a group*  
24 *health plan.*

25 *“(2) PROHIBITION ON UNDERWRITING*  
26 *AND PREMIUM RATING.—Notwithstanding*

1 *paragraph (1), a group health plan or a*  
2 *health insurance issuer (in connection*  
3 *with health insurance coverage offered in*  
4 *connection with a group health plan)*  
5 *shall not use or disclose genetic informa-*  
6 *tion (including information about a re-*  
7 *quest for or a receipt of genetic services by*  
8 *an individual or family member of such*  
9 *individual) for purposes of underwriting,*  
10 *determinations of eligibility to enroll, pre-*  
11 *mium rating, or the creation, renewal or*  
12 *replacement of a plan, contract or cov-*  
13 *erage for health insurance or health bene-*  
14 *fits.*

15 **“(b) PROHIBITION ON COLLECTION OF GE-**  
16 **NETIC INFORMATION.—**

17 **“(1) IN GENERAL.—**A group health plan  
18 **or health insurance issuer (in connection**  
19 **with health insurance coverage offered in**  
20 **connection with a group health plan)**  
21 **shall not request, require, or purchase ge-**  
22 **netic information (including information**  
23 **about a request for or a receipt of genetic**  
24 **services by an individual or family mem-**  
25 **ber of such individual) for purposes of un-**

1 *derwriting, determinations of eligibility to*  
2 *enroll, premium rating, or the creation,*  
3 *renewal or replacement of a plan, con-*  
4 *tract or coverage for health insurance or*  
5 *health benefits.*

6 “(2) *LIMITATION RELATING TO THE COL-*  
7 *LECTION OF GENETIC INFORMATION PRIOR TO*  
8 *ENROLLMENT.—A group health plan or*  
9 *health insurance issuer (in connection*  
10 *with health insurance coverage offered in*  
11 *connection with a group health plan)*  
12 *shall not request, require, or purchase ge-*  
13 *netic information (including information*  
14 *about a request for or a receipt of genetic*  
15 *services by an individual or family mem-*  
16 *ber of such individual) concerning a par-*  
17 *ticipant, beneficiary, or enrollee prior to*  
18 *the enrollment, and in connection with*  
19 *such enrollment, of such individual under*  
20 *the plan or coverage.*

21 “(3) *INCIDENTAL COLLECTION.—Where a*  
22 *group health plan or health insurance*  
23 *issuer (in connection with health insur-*  
24 *ance coverage offered in connection with*  
25 *a group health plan) obtains genetic in-*

1 *formation incidental to the requesting, re-*  
2 *quiring, or purchasing of other informa-*  
3 *tion concerning a participant or bene-*  
4 *ficiary, such request, requirement, or pur-*  
5 *chase shall not be considered a violation*  
6 *of this subsection if—*

7 *“(A) such request, requirement, or*  
8 *purchase is not in violation of para-*  
9 *graph (1); and*

10 *“(B) any genetic information (in-*  
11 *cluding information about a request*  
12 *for or receipt of genetic services) re-*  
13 *quested, required, or purchased is not*  
14 *used or disclosed in violation of sub-*  
15 *section (a).*

16 *“(c) APPLICATION OF CONFIDENTIALITY*  
17 *STANDARDS.—The provisions of subsections (a)*  
18 *and (b) shall not apply—*

19 *“(1) to group health plans or health*  
20 *insurance issuers that are not otherwise*  
21 *covered under the regulations promul-*  
22 *gated by the Secretary under part C of*  
23 *title XI of the Social Security Act (42*  
24 *U.S.C. 1320d et seq.) and section 264 of the*  
25 *Health Insurance Portability and Ac-*

1 *countability Act of 1996 (42 U.S.C. 1320d-*  
2 *2 note); and*

3 *“(2) to genetic information that is not*  
4 *considered to be individually-identifiable*  
5 *health information under the regulations*  
6 *promulgated by the Secretary under part*  
7 *C of title XI of the Social Security Act (42*  
8 *U.S.C. 1320d et seq.) and section 264 of the*  
9 *Health Insurance Portability and Ac-*  
10 *countability Act of 1996 (42 U.S.C. 1320d-*  
11 *2 note).*

12 *“(d) COORDINATION WITH PRIVACY REGULA-*  
13 *TIONS.—The Secretary shall implement and*  
14 *administer this section in a manner that is*  
15 *consistent with the implementation and ad-*  
16 *ministration by the Secretary of the regula-*  
17 *tions promulgated by the Secretary under part*  
18 *C of title XI of the Social Security Act (42*  
19 *U.S.C. 1320d et seq.) and section 264 of the*  
20 *Health Insurance Portability and Account-*  
21 *ability Act of 1996 (42 U.S.C. 1320d-2 note).”.*

22 *(B) APPLICATION TO SMALL GROUP*  
23 *HEALTH PLANS.—Section 2721(a) of*  
24 *such Act (42 U.S.C. 300gg-21(a)) is*  
25 *amended by inserting “(other than*

1           *section 2703)*” after “*subparts 1 and*  
2           *3*”.

3           **(2) INDIVIDUAL HEALTH INSURANCE.—**  
4           *Such title is further amended by inserting*  
5           *after section 2744 the following new sec-*  
6           *tion:*

7           “*SEC. 2744A. PRIVACY AND CONFIDENTIALITY OF GENETIC*  
8   *INFORMATION.*

9           “*(a) COMPLIANCE WITH CERTAIN CONFIDEN-*  
10           *TIALITY STANDARDS WITH RESPECT TO GENETIC*  
11           *INFORMATION.—*

12                           “*(1) IN GENERAL.—The regulations pro-*  
13                           *mulgated by the Secretary under part C of*  
14                           *title XI of the Social Security Act (42*  
15                           *U.S.C. 1320d et seq.) and section 264 of the*  
16                           *Health Insurance Portability and Ac-*  
17                           *countability Act of 1996 (42 U.S.C. 1320d-*  
18                           *2 note) shall apply to the use or disclosure*  
19                           *of genetic information by an health insur-*  
20                           *ance issuer in connection with individual*  
21                           *health insurance coverage.*

22                           “*(2) PROHIBITION ON UNDERWRITING*  
23                           *AND PREMIUM RATING.—Notwithstanding*  
24                           *paragraph (1), a health insurance issuer*  
25                           *shall not use or disclose genetic informa-*

1        *tion (including information about a re-*  
2        *quest for or a receipt of genetic services by*  
3        *an individual or family member of such*  
4        *individual) for purposes of underwriting,*  
5        *determinations of eligibility to enroll, pre-*  
6        *mium rating, or the creation, renewal or*  
7        *replacement of a plan, contract or cov-*  
8        *erage for health insurance or health bene-*  
9        *fits in the individual market.*

10        **“(b) PROHIBITION ON COLLECTION OF GE-**  
11 **NETIC INFORMATION.—**

12                **“(1) IN GENERAL.—***A health insurance*  
13        *issuer shall not request, require, or pur-*  
14        *chase genetic information (including in-*  
15        *formation about a request for or a receipt*  
16        *of genetic services by an individual or*  
17        *family member of such individual) for*  
18        *purposes of underwriting, determinations*  
19        *of eligibility to enroll, premium rating, or*  
20        *the creation, renewal or replacement of a*  
21        *plan, contract or coverage for health in-*  
22        *surance or health benefits in the indi-*  
23        *vidual market.*

24                **“(2) LIMITATION RELATING TO THE COL-**  
25        **LECTION OF GENETIC INFORMATION PRIOR TO**

1 *ENROLLMENT.—A health insurance issuer*  
2 *offering health insurance coverage in the*  
3 *individual market shall not request, re-*  
4 *quire, or purchase genetic information*  
5 *(including information about a request*  
6 *for or a receipt of genetic services by an*  
7 *individual or family member of such indi-*  
8 *vidual) concerning an enrollee prior to*  
9 *the enrollment, and in connection with*  
10 *such enrollment, of such individual under*  
11 *the coverage.*

12 *“(3) INCIDENTAL COLLECTION.—Where a*  
13 *health insurance issuer obtains genetic*  
14 *information incidental to the requesting,*  
15 *requiring, or purchasing of other infor-*  
16 *mation concerning an enrollee in the indi-*  
17 *vidual market, such request, requirement,*  
18 *or purchase shall not be considered a vio-*  
19 *lation of this subsection if—*

20 *“(A) such request, requirement, or*  
21 *purchase is not in violation of para-*  
22 *graph (1); and*

23 *“(B) any genetic information (in-*  
24 *cluding information about a request*  
25 *for or receipt of genetic services) re-*

1           *quested, required, or purchased is not*  
2           *used or disclosed in violation of sub-*  
3           *section (a).*

4           “(c) *APPLICATION OF CONFIDENTIALITY*  
5 *STANDARDS.—The provisions of subsections (a)*  
6 *and (b) shall not apply—*

7           “(1) *to health insurance issuers that*  
8           *are not otherwise covered under the regu-*  
9           *lations promulgated by the Secretary*  
10           *under part C of title XI of the Social Secu-*  
11           *rity Act (42 U.S.C. 1320d et seq.) and sec-*  
12           *tion 264 of the Health Insurance Port-*  
13           *ability and Accountability Act of 1996 (42*  
14           *U.S.C. 1320d–2 note); and*

15           “(2) *to genetic information that is not*  
16           *considered to be individually-identifiable*  
17           *health information under the regulations*  
18           *promulgated by the Secretary under part*  
19           *C of title XI of the Social Security Act (42*  
20           *U.S.C. 1320d et seq.) and section 264 of the*  
21           *Health Insurance Portability and Ac-*  
22           *countability Act of 1996 (42 U.S.C. 1320d–*  
23           *2 note).*

24           “(d) *COORDINATION WITH PRIVACY REGULA-*  
25 *TIONS.—The Secretary shall implement and*

1 *administer this section in a manner that is*  
2 *consistent with the implementation and ad-*  
3 *ministration by the Secretary of the regula-*  
4 *tions promulgated by the Secretary under part*  
5 *C of title XI of the Social Security Act (42*  
6 *U.S.C. 1320d et seq.) and section 264 of the*  
7 *Health Insurance Portability and Account-*  
8 *ability Act of 1996 (42 U.S.C. 1320d–2 note).”.*

9       **(b) APPLICATION TO MEDICARE SUPPLE-**  
10 **MENTAL POLICIES.—Section 1882 of the Social**  
11 **Security Act (42 U.S.C. 1395ss), as amended by**  
12 **section 103(b)(1), is amended by adding at the**  
13 **end the following new subsection:**

14       **“(y) PRIVACY AND CONFIDENTIALITY OF GE-**  
15 **NETIC INFORMATION.—**

16               **“(1) COMPLIANCE WITH CERTAIN CON-**  
17 **FIDENTIALITY STANDARDS WITH RESPECT TO**  
18 **GENETIC INFORMATION.—**

19                       **“(A) IN GENERAL.—The regulations**  
20 **promulgated by the Secretary under**  
21 **part C of title XI of the Social Security**  
22 **Act (42 U.S.C. 1320d et seq.) and sec-**  
23 **tion 264 of the Health Insurance Port-**  
24 **ability and Accountability Act of 1996**  
25 **(42 U.S.C. 1320d–2 note) shall apply to**

1        *the use or disclosure of genetic infor-*  
2        *mation by an issuer of a medicare*  
3        *supplemental policy.*

4            **“(B) PROHIBITION ON UNDER-**  
5        **WRITING AND PREMIUM RATING.—***Not-*  
6        *withstanding subparagraph (A), an*  
7        *issuer of a medicare supplemental*  
8        *policy shall not use or disclose genetic*  
9        *information (including information*  
10       *about a request for or a receipt of ge-*  
11       *netic services by an individual or fam-*  
12       *ily member of such individual) for*  
13       *purposes of underwriting, determina-*  
14       *tions of eligibility to enroll, premium*  
15       *rating, or the creation, renewal or re-*  
16       *placement of a plan, contract or cov-*  
17       *erage for health insurance or health*  
18       *benefits in connection with such pol-*  
19       *icy.*

20            **“(2) PROHIBITION ON COLLECTION OF GE-**  
21        **NETIC INFORMATION.—**

22            **“(A) IN GENERAL.—***An issuer of a*  
23        *medicare supplemental policy shall*  
24        *not request, require, or purchase ge-*  
25        *netic information (including informa-*

1            *tion about a request for or a receipt of*  
2            *genetic services by an individual or*  
3            *family member of such individual) for*  
4            *purposes of underwriting, determina-*  
5            *tions of eligibility to enroll, premium*  
6            *rating, or the creation, renewal or re-*  
7            *placement of a plan, contract or cov-*  
8            *erage for health insurance or health*  
9            *benefits in connection with such pol-*  
10           *icy.*

11            **“(B) LIMITATION RELATING TO THE**  
12            **COLLECTION OF GENETIC INFORMATION**  
13            **PRIOR TO ENROLLMENT.—***An issuer of a*  
14            *medicare supplemental policy shall*  
15            *not request, require, or purchase ge-*  
16            *netic information (including informa-*  
17            *tion about a request for or a receipt of*  
18            *genetic services by an individual or*  
19            *family member of such individual)*  
20            *concerning an enrollee prior to the en-*  
21            *rollment, and in connection with such*  
22            *enrollment, of such individual under*  
23            *the policy.*

24            **“(C) INCIDENTAL COLLECTION.—**  
25            *Where the issuer of a medicare supple-*

1           *mental policy obtains genetic informa-*  
2           *tion incidental to the requesting, re-*  
3           *quiring, or purchasing of other infor-*  
4           *mation concerning an enrollee in con-*  
5           *nection with such a policy, such re-*  
6           *quest, requirement, or purchase shall*  
7           *not be considered a violation of this*  
8           *paragraph if—*

9                     *“(i) such request, requirement,*  
10                    *or purchase is not in violation of*  
11                    *subparagraph (A); and*

12                    *“(ii) any genetic information*  
13                    *(including information about a re-*  
14                    *quest for or receipt of genetic serv-*  
15                    *ices) requested, required, or pur-*  
16                    *chased is not used or disclosed in*  
17                    *violation of paragraph (1).*

18                    *“(3) APPLICATION OF CONFIDENTIALITY*  
19                    *STANDARDS.—The provisions of para-*  
20                    *graphs (1) and (2) shall not apply—*

21                    *“(A) to health insurance issuers*  
22                    *that are not otherwise covered under*  
23                    *the regulations promulgated by the*  
24                    *Secretary under part C of title XI of*  
25                    *the Social Security Act (42 U.S.C.*

1           ***1320d et seq.) and section 264 of the***  
2           ***Health Insurance Portability and Ac-***  
3           ***countability Act of 1996 (42 U.S.C.***  
4           ***1320d–2 note); and***

5           ***“(B) to genetic information that is***  
6           ***not considered to be individually-iden-***  
7           ***tifiable health information under the***  
8           ***regulations promulgated by the Sec-***  
9           ***retary under part C of title XI of the***  
10           ***Social Security Act (42 U.S.C. 1320d et***  
11           ***seq.) and section 264 of the Health In-***  
12           ***surance Portability and Account-***  
13           ***ability Act of 1996 (42 U.S.C. 1320d–2***  
14           ***note).***

15           ***“(4) COORDINATION WITH PRIVACY REGU-***  
16           ***LATIONS.—The Secretary shall implement***  
17           ***and administer this subsection in a man-***  
18           ***ner that is consistent with the implemen-***  
19           ***tation and administration by the Sec-***  
20           ***retary of the regulations promulgated by***  
21           ***the Secretary under part C of title XI of***  
22           ***the Social Security Act (42 U.S.C. 1320d et***  
23           ***seq.) and section 264 of the Health Insur-***  
24           ***ance Portability and Accountability Act of***  
25           ***1996 (42 U.S.C. 1320d–2 note).”.***

1 *SEC. 105. ASSURING COORDINATION.*

2       ***(a) IN GENERAL.—Except as provided in***  
3 ***subsection (b), the Secretary of the Treasury,***  
4 ***the Secretary of Health and Human Services,***  
5 ***and the Secretary of Labor shall ensure,***  
6 ***through the execution of an interagency memo-***  
7 ***randum of understanding among such Secre-***  
8 ***taries, that—***

9           ***(1) regulations, rulings, and interpre-***  
10 ***tations issued by such Secretaries relating***  
11 ***to the same matter over which two or***  
12 ***more such Secretaries have responsibility***  
13 ***under this title (and the amendments***  
14 ***made by this title) are administered so as***  
15 ***to have the same effect at all times; and***

16           ***(2) coordination of policies relating to***  
17 ***enforcing the same requirements through***  
18 ***such Secretaries in order to have a coordi-***  
19 ***nated enforcement strategy that avoids***  
20 ***duplication of enforcement efforts and as-***  
21 ***signs priorities in enforcement.***

22       ***(b) AUTHORITY OF THE SECRETARY.—The***  
23 ***Secretary of Health and Human Services has***  
24 ***the sole authority to promulgate regulations to***  
25 ***implement section 104.***

1 **SEC. 106. RELATIONSHIP TO TITLE II WITH RESPECT TO EN-**  
2 **FORCEMENT.**

3 ***With respect to the relationship between***  
4 ***title II and this title (and the amendments***  
5 ***made by this title):***

6 ***(1) The genetic nondiscrimination re-***  
7 ***quirements and remedies of this title (and***  
8 ***such amendments) are exclusive for—***

9 ***(A) group health plans;***

10 ***(B) health or other insurance cov-***  
11 ***erage issued in connection with group***  
12 ***health plans;***

13 ***(C) individual health insurance***  
14 ***coverage; and***

15 ***(D) and medicare supplemental***  
16 ***policies.***

17 ***(2) Nothing in title II shall be con-***  
18 ***strued to establish a requirement or rem-***  
19 ***edy under such title with respect to group***  
20 ***health plans, health or other insurance***  
21 ***coverage issued in connection with group***  
22 ***health plans, individual health insurance***  
23 ***coverage, or medicare supplemental poli-***  
24 ***cies, notwithstanding any provision of***  
25 ***such title.***

1 *SEC. 107. REGULATIONS; EFFECTIVE DATE.*

2       **(a) REGULATIONS.**—*Not later than 1 year*  
3 *after the date of enactment of this title, the*  
4 *Secretary of Labor, the Secretary of Health*  
5 *and Human Services, and the Secretary of the*  
6 *Treasury shall issue final regulations in an*  
7 *accessible format to carry out this title.*

8       **(b) EFFECTIVE DATE.**—*Except as provided*  
9 *in section 103, the amendments made by this*  
10 *title shall take effect on the date that is 18*  
11 *months after the date of enactment of this Act.*

12 **TITLE II—PROHIBITING EMPLOY-**  
13 **MENT DISCRIMINATION ON**  
14 **THE BASIS OF GENETIC IN-**  
15 **FORMATION**

16 *SEC. 201. DEFINITIONS.*

17 *In this title:*

18       **(1) COMMISSION.**—*The term “Commis-*  
19 *sion” means the Equal Employment Op-*  
20 *portunity Commission as created by sec-*  
21 *tion 705 of the Civil Rights Act of 1964 (42*  
22 *U.S.C. 2000e–4).*

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

25               **(A) IN GENERAL.**—*The term “em-*  
26 *ployee” means—*

1           *(i) an employee (including an*  
2           *applicant), as defined in section*  
3           *701(f) of the Civil Rights Act of*  
4           *1964 (42 U.S.C. 2000e(f));*

5           *(ii) a State employee (includ-*  
6           *ing an applicant) described in sec-*  
7           *tion 304(a) of the Government Em-*  
8           *ployee Rights Act of 1991 (42*  
9           *U.S.C. 2000e-16c(a));*

10          *(iii) a covered employee (in-*  
11          *cluding an applicant), as defined*  
12          *in section 101 of the Congressional*  
13          *Accountability Act of 1995 (2*  
14          *U.S.C. 1301);*

15          *(iv) a covered employee (in-*  
16          *cluding an applicant), as defined*  
17          *in section 411(c) of title 3, United*  
18          *States Code; or*

19          *(v) an employee or applicant*  
20          *to which section 717(a) of the Civil*  
21          *Rights Act of 1964 (42 U.S.C.*  
22          *2000e-16(a)) applies.*

23          **(B) EMPLOYER.—***The term “em-*  
24          *ployer” means—*

1           *(i) an employer (as defined in*  
2           *section 701(b) of the Civil Rights*  
3           *Act of 1964 (42 U.S.C. 2000e(b));*

4           *(ii) an entity employing a*  
5           *State employee described in sec-*  
6           *tion 304(a) of the Government Em-*  
7           *ployee Rights Act of 1991;*

8           *(iii) an employing office, as*  
9           *defined in section 101 of the Con-*  
10           *gressional Accountability Act of*  
11           *1995;*

12           *(iv) an employing office, as de-*  
13           *fined in section 411(c) of title 3,*  
14           *United States Code; or*

15           *(v) an entity to which section*  
16           *717(a) of the Civil Rights Act of*  
17           *1964 applies.*

18           **(C) EMPLOYMENT AGENCY; LABOR**  
19           **ORGANIZATION.—***The terms “employ-*  
20           *ment agency” and “labor organiza-*  
21           *tion” have the meanings given the*  
22           *terms in section 701 of the Civil Rights*  
23           *Act of 1964 (42 U.S.C. 2000e).*

24           **(D) MEMBER.—***The term “member”,*  
25           *with respect to a labor organization,*

1           *includes an applicant for membership*  
2           *in a labor organization.*

3           **(3) FAMILY MEMBER.**—*The term “family*  
4           *member” means with respect to an indi-*  
5           *vidual—*

6                     **(A) the spouse of the individual;**

7                     **(B) a dependent child of the indi-**  
8           *vidual, including a child who is born*  
9           *to or placed for adoption with the in-*  
10           *dividual; and*

11                    **(C) all other individuals related**  
12           *by blood to the individual or the*  
13           *spouse or child described in subpara-*  
14           *graph (A) or (B).*

15           **(4) GENETIC INFORMATION.**—

16                    **(A) IN GENERAL.**—*Except as pro-*  
17           *vided in subparagraph (B), the term*  
18           *“genetic information” means informa-*  
19           *tion about—*

20                            **(i) an individual’s genetic**  
21                            *tests;*

22                            **(ii) the genetic tests of family**  
23                            *members of the individual; or*

1                   *(iii) the occurrence of a dis-*  
2                   *ease or disorder in family mem-*  
3                   *bers of the individual.*

4                   **(B) EXCEPTIONS.**—*The term “ge-*  
5                   *netic information” shall not include*  
6                   *information about the sex or age of an*  
7                   *individual.*

8                   **(5) GENETIC MONITORING.**—*The term*  
9                   *“genetic monitoring” means the periodic*  
10                  *examination of employees to evaluate ac-*  
11                  *quired modifications to their genetic ma-*  
12                  *terial, such as chromosomal damage or*  
13                  *evidence of increased occurrence of*  
14                  *mutations, that may have developed in the*  
15                  *course of employment due to exposure to*  
16                  *toxic substances in the workplace, in*  
17                  *order to identify, evaluate, and respond to*  
18                  *the effects of or control adverse environ-*  
19                  *mental exposures in the workplace.*

20                  **(6) GENETIC SERVICES.**—*The term “ge-*  
21                  *netic services” means—*

22                               **(A) a genetic test;**

23                               **(B) genetic counseling (such as ob-**  
24                               *taining, interpreting or assessing ge-*  
25                               *netic information); or*

1           ***(C) genetic education.***

2           ***(7) GENETIC TEST.—***

3           ***(A) IN GENERAL.—The term “ge-***  
4           ***netic test” means the analysis of***  
5           ***human DNA, RNA, chromosomes, pro-***  
6           ***teins, or metabolites, that detects***  
7           ***genotypes, mutations, or chromosomal***  
8           ***changes.***

9           ***(B) EXCEPTION.—The term “genetic***  
10           ***test” does not mean an analysis of***  
11           ***proteins or metabolites that does not***  
12           ***detect genotypes, mutations, or chro-***  
13           ***mosomal changes.***

14 ***SEC. 202. EMPLOYER PRACTICES.***

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

18           ***(1) to fail or refuse to hire or to dis-***  
19           ***charge any employee, or otherwise to dis-***  
20           ***criminate against any employee with re-***  
21           ***spect to the compensation, terms, condi-***  
22           ***tions, or privileges of employment of the***  
23           ***employee, because of genetic information***  
24           ***with respect to the employee (or informa-***  
25           ***tion about a request for or the receipt of***

1 *genetic services by such employee or fam-*  
2 *ily member of such employee); or*

3 *(2) to limit, segregate, or classify the*  
4 *employees of the employer in any way that*  
5 *would deprive or tend to deprive any em-*  
6 *ployee of employment opportunities or oth-*  
7 *erwise adversely affect the status of the*  
8 *employee as an employee, because of ge-*  
9 *netic information with respect to the em-*  
10 *ployee (or information about a request for*  
11 *or the receipt of genetic services by such*  
12 *employee or family member of such em-*  
13 *ployee).*

14 **(b) ACQUISITION OF GENETIC INFORMA-**  
15 **TION.—***It shall be an unlawful employment*  
16 *practice for an employer to request, require, or*  
17 *purchase genetic information with respect to*  
18 *an employee or a family member of the em-*  
19 *ployee (or information about a request for the*  
20 *receipt of genetic services by such employee or*  
21 *a family member of such employee) except—*

22 *(1) where an employer inadvertently*  
23 *requests or requires family medical his-*  
24 *tory of the employee or family member of*  
25 *the employee;*

1           ***(2) where—***

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

6                   ***(B) the employee provides prior,***  
7                   ***knowing, voluntary, and written au-***  
8                   ***thorization;***

9                   ***(C) only the employee (or family***  
10                   ***member if the family member is re-***  
11                   ***ceiving genetic services) and the li-***  
12                   ***censed health care professional or***  
13                   ***board certified genetic counselor in-***  
14                   ***volved in providing such services re-***  
15                   ***ceive individually identifiable infor-***  
16                   ***mation concerning the results of such***  
17                   ***services; and***

18                   ***(D) any individually identifiable***  
19                   ***genetic information provided under***  
20                   ***subparagraph (C) in connection with***  
21                   ***the services provided under subpara-***  
22                   ***graph (A) is only available for pur-***  
23                   ***poses of such services and shall not be***  
24                   ***disclosed to the employer except in ag-***

1            *gregate terms that do not disclose the*  
2            *identity of specific employees;*

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

10           *(4) where an employer purchases doc-*  
11           *uments that are commercially and pub-*  
12           *licly available (including newspapers,*  
13           *magazines, periodicals, and books, but*  
14           *not including medical databases or court*  
15           *records) that include family medical his-*  
16           *tory; or*

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

21                    *(A) the employer provides written*  
22                    *notice of the genetic monitoring to the*  
23                    *employee;*

1           ***(B)(i) the employee provides prior,***  
2           ***knowing, voluntary, and written au-***  
3           ***thorization; or***

4           ***(ii) the genetic monitoring is re-***  
5           ***quired by Federal or State law;***

6           ***(C) the employee is informed of in-***  
7           ***dividual monitoring results;***

8           ***(D) the monitoring is in compli-***  
9           ***ance with—***

10           ***(i) any Federal genetic moni-***  
11           ***toring regulations, including any***  
12           ***such regulations that may be pro-***  
13           ***mulgated by the Secretary of***  
14           ***Labor pursuant to the Occupa-***  
15           ***tional Safety and Health Act of***  
16           ***1970 (29 U.S.C. 651 et seq.), the***  
17           ***Federal Mine Safety and Health***  
18           ***Act of 1977 (30 U.S.C. 801 et seq.),***  
19           ***or the Atomic Energy Act of 1954***  
20           ***(42 U.S.C. 2011 et seq.); or***

21           ***(ii) State genetic monitoring***  
22           ***regulations, in the case of a State***  
23           ***that is implementing genetic mon-***  
24           ***itoring regulations under the au-***  
25           ***thority of the Occupational Safety***

1            *and Health Act of 1970 (29 U.S.C.*  
2            *651 et seq.); and*

3            *(E) the employer, excluding any li-*  
4            *censed health care professional or*  
5            *board certified genetic counselor that*  
6            *is involved in the genetic monitoring*  
7            *program, receives the results of the*  
8            *monitoring only in aggregate terms*  
9            *that do not disclose the identity of spe-*  
10           *cific employees.*

11           *(c) PRESERVATION OF PROTECTIONS.—In the*  
12           *case of information to which any of para-*  
13           *graphs (1) through (5) of subsection (b) ap-*  
14           *plies, such information may not be used in vio-*  
15           *lation of paragraph (1) or (2) of subsection (a)*  
16           *or treated or disclosed in a manner that vio-*  
17           *lates section 206.*

18           *SEC. 203. EMPLOYMENT AGENCY PRACTICES.*

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

22           *(1) to fail or refuse to refer for employ-*  
23           *ment, or otherwise to discriminate*  
24           *against, any individual because of genetic*  
25           *information with respect to the individual*

1        *(or information about a request for or the*  
2        *receipt of genetic services by such indi-*  
3        *vidual or family member of such indi-*  
4        *vidual);*

5            *(2) to limit, segregate, or classify indi-*  
6        *viduals or fail or refuse to refer for em-*  
7        *ployment any individual in any way that*  
8        *would deprive or tend to deprive any indi-*  
9        *vidual of employment opportunities, or*  
10       *otherwise adversely affect the status of the*  
11       *individual as an employee, because of ge-*  
12       *netic information with respect to the indi-*  
13       *vidual (or information about a request for*  
14       *or the receipt of genetic services by such*  
15       *individual or family member of such indi-*  
16       *vidual); or*

17            *(3) to cause or attempt to cause an*  
18        *employer to discriminate against an indi-*  
19        *vidual in violation of this title.*

20        **(b) ACQUISITION OF GENETIC INFORMA-**  
21        *TION.—It shall be an unlawful employment*  
22        *practice for an employment agency to request,*  
23        *require, or purchase genetic information with*  
24        *respect to an individual or a family member*  
25        *of the individual (or information about a re-*

1 *quest for the receipt of genetic services by such*  
2 *individual or a family member of such indi-*  
3 *vidual) except—*

4 *(1) where an employment agency inad-*  
5 *vertently requests or requires family med-*  
6 *ical history of the individual or family*  
7 *member of the individual;*

8 *(2) where—*

9 *(A) health or genetic services are*  
10 *offered by the employment agency, in-*  
11 *cluding such services offered as part*  
12 *of a bona fide wellness program;*

13 *(B) the individual provides prior,*  
14 *knowing, voluntary, and written au-*  
15 *thorization;*

16 *(C) only the individual (or family*  
17 *member if the family member is re-*  
18 *ceiving genetic services) and the li-*  
19 *censed health care professional or*  
20 *board certified genetic counselor in-*  
21 *involved in providing such services re-*  
22 *ceive individually identifiable infor-*  
23 *mation concerning the results of such*  
24 *services; and*

1           ***(D) any individually identifiable***  
2           ***genetic information provided under***  
3           ***subparagraph (C) in connection with***  
4           ***the services provided under subpara-***  
5           ***graph (A) is only available for pur-***  
6           ***poses of such services and shall not be***  
7           ***disclosed to the employment agency***  
8           ***except in aggregate terms that do not***  
9           ***disclose the identity of specific indi-***  
10          ***viduals;***

11          ***(3) where an employment agency re-***  
12          ***quests or requires family medical history***  
13          ***from the individual to comply with the***  
14          ***certification provisions of section 103 of***  
15          ***the Family and Medical Leave Act of 1993***  
16          ***(29 U.S.C. 2613) or such requirements***  
17          ***under State family and medical leave***  
18          ***laws;***

19          ***(4) where an employment agency pur-***  
20          ***chases documents that are commercially***  
21          ***and publicly available (including news-***  
22          ***papers, magazines, periodicals, and***  
23          ***books, but not including medical data-***  
24          ***bases or court records) that include fam-***  
25          ***ily medical history; or***

1           ***(5) where the information involved is***  
2           ***to be used for genetic monitoring of the bi-***  
3           ***ological effects of toxic substances in the***  
4           ***workplace, but only if—***

5                   ***(A) the employment agency pro-***  
6                   ***vides written notice of the genetic***  
7                   ***monitoring to the individual;***

8                   ***(B)(i) the individual provides***  
9                   ***prior, knowing, voluntary, and writ-***  
10                   ***ten authorization; or***

11                   ***(ii) the genetic monitoring is re-***  
12                   ***quired by Federal or State law;***

13                   ***(C) the individual is informed of***  
14                   ***individual monitoring results;***

15                   ***(D) the monitoring is in compli-***  
16                   ***ance with—***

17                           ***(i) any Federal genetic moni-***  
18                           ***toring regulations, including any***  
19                           ***such regulations that may be pro-***  
20                           ***mulgated by the Secretary of***  
21                           ***Labor pursuant to the Occupa-***  
22                           ***tional Safety and Health Act of***  
23                           ***1970 (29 U.S.C. 651 et seq.), the***  
24                           ***Federal Mine Safety and Health***  
25                           ***Act of 1977 (30 U.S.C. 801 et seq.),***

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

3            *(ii) State genetic monitoring*  
4            *regulations, in the case of a State*  
5            *that is implementing genetic mon-*  
6            *itoring regulations under the au-*  
7            *thority of the Occupational Safety*  
8            *and Health Act of 1970 (29 U.S.C.*  
9            *651 et seq.); and*

10           *(E) the employment agency, ex-*  
11           *cluding any licensed health care pro-*  
12           *fessional or board certified genetic*  
13           *counselor that is involved in the ge-*  
14           *netic monitoring program, receives*  
15           *the results of the monitoring only in*  
16           *aggregate terms that do not disclose*  
17           *the identity of specific individuals.*

18           *(c) PRESERVATION OF PROTECTIONS.—In the*  
19           *case of information to which any of para-*  
20           *graphs (1) through (5) of subsection (b) ap-*  
21           *plies, such information may not be used in vio-*  
22           *lation of paragraph (1) or (2) of subsection (a)*  
23           *or treated or disclosed in a manner that vio-*  
24           *lates section 206.*

1 SEC. 204. LABOR ORGANIZATION PRACTICES.

2 (a) *USE OF GENETIC INFORMATION.*—*It shall*  
3 *be an unlawful employment practice for a*  
4 *labor organization—*

5 (1) *to exclude or to expel from the*  
6 *membership of the organization, or other-*  
7 *wise to discriminate against, any member*  
8 *because of genetic information with re-*  
9 *spect to the member (or information about*  
10 *a request for or the receipt of genetic serv-*  
11 *ices by such member or family member of*  
12 *such member);*

13 (2) *to limit, segregate, or classify the*  
14 *members of the organization, or fail or*  
15 *refuse to refer for employment any mem-*  
16 *ber, in any way that would deprive or*  
17 *tend to deprive any member of employ-*  
18 *ment opportunities, or otherwise adversely*  
19 *affect the status of the member as an em-*  
20 *ployee, because of genetic information*  
21 *with respect to the member (or informa-*  
22 *tion about a request for or the receipt of*  
23 *genetic services by such member or family*  
24 *member of such member); or*

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

4           **(b) ACQUISITION OF GENETIC INFORMA-**  
5           **TION.—It shall be an unlawful employment**  
6           **practice for a labor organization to request,**  
7           **require, or purchase genetic information with**  
8           **respect to a member or a family member of the**  
9           **member (or information about a request for**  
10           **the receipt of genetic services by such member**  
11           **or a family member of such member) except—**

12                 **(1) where a labor organization inad-**  
13                 **vertently requests or requires family med-**  
14                 **ical history of the member or family mem-**  
15                 **ber of the member;**

16                 **(2) where—**

17                         **(A) health or genetic services are**  
18                         **offered by the labor organization, in-**  
19                         **cluding such services offered as part**  
20                         **of a bona fide wellness program;**

21                         **(B) the member provides prior,**  
22                         **knowing, voluntary, and written au-**  
23                         **thorization;**

24                         **(C) only the member (or family**  
25                         **member if the family member is re-**

1           *ceiving genetic services) and the li-*  
2           *censed health care professional or*  
3           *board certified genetic counselor in-*  
4           *involved in providing such services re-*  
5           *ceive individually identifiable infor-*  
6           *mation concerning the results of such*  
7           *services; and*

8           *(D) any individually identifiable*  
9           *genetic information provided under*  
10           *subparagraph (C) in connection with*  
11           *the services provided under subpara-*  
12           *graph (A) is only available for pur-*  
13           *poses of such services and shall not be*  
14           *disclosed to the labor organization ex-*  
15           *cept in aggregate terms that do not*  
16           *disclose the identity of specific mem-*  
17           *bers;*

18           *(3) where a labor organization re-*  
19           *quests or requires family medical history*  
20           *from the members to comply with the cer-*  
21           *tification provisions of section 103 of the*  
22           *Family and Medical Leave Act of 1993 (29*  
23           *U.S.C. 2613) or such requirements under*  
24           *State family and medical leave laws;*

1           (4) *where a labor organization pur-*  
2 *chases documents that are commercially*  
3 *and publicly available (including news-*  
4 *papers, magazines, periodicals, and*  
5 *books, but not including medical data-*  
6 *bases or court records) that include fam-*  
7 *ily medical history; or*

8           (5) *where the information involved is*  
9 *to be used for genetic monitoring of the bi-*  
10 *ological effects of toxic substances in the*  
11 *workplace, but only if—*

12                 (A) *the labor organization pro-*  
13 *vides written notice of the genetic*  
14 *monitoring to the member;*

15                 (B)(i) *the member provides prior,*  
16 *knowing, voluntary, and written au-*  
17 *thorization; or*

18                 (ii) *the genetic monitoring is re-*  
19 *quired by Federal or State law;*

20                 (C) *the member is informed of in-*  
21 *dividual monitoring results;*

22                 (D) *the monitoring is in compli-*  
23 *ance with—*

24                         (i) *any Federal genetic moni-*  
25 *toring regulations, including any*

1            *such regulations that may be pro-*  
2            *mulgated by the Secretary of*  
3            *Labor pursuant to the Occupa-*  
4            *tional Safety and Health Act of*  
5            *1970 (29 U.S.C. 651 et seq.), the*  
6            *Federal Mine Safety and Health*  
7            *Act of 1977 (30 U.S.C. 801 et seq.),*  
8            *or the Atomic Energy Act of 1954*  
9            *(42 U.S.C. 2011 et seq.); or*

10            *(ii) State genetic monitoring*  
11            *regulations, in the case of a State*  
12            *that is implementing genetic mon-*  
13            *itoring regulations under the au-*  
14            *thority of the Occupational Safety*  
15            *and Health Act of 1970 (29 U.S.C.*  
16            *651 et seq.); and*

17            *(E) the labor organization, exclud-*  
18            *ing any licensed health care profes-*  
19            *sional or board certified genetic coun-*  
20            *selor that is involved in the genetic*  
21            *monitoring program, receives the re-*  
22            *sults of the monitoring only in aggre-*  
23            *gate terms that do not disclose the*  
24            *identity of specific members.*

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

8 ***SEC. 205. TRAINING PROGRAMS.***

9       ***(a) USE OF GENETIC INFORMATION.—It shall***  
10 ***be an unlawful employment practice for any***  
11 ***employer, labor organization, or joint labor-***  
12 ***management committee controlling appren-***  
13 ***ticeship or other training or retraining, in-***  
14 ***cluding on-the-job training programs—***

15           ***(1) to discriminate against any indi-***  
16 ***vidual because of genetic information***  
17 ***with respect to the individual (or informa-***  
18 ***tion about a request for or the receipt of***  
19 ***genetic services by such individual or a***  
20 ***family member of such individual) in ad-***  
21 ***mission to, or employment in, any pro-***  
22 ***gram established to provide apprentice-***  
23 ***ship or other training or retraining;***

24           ***(2) to limit, segregate, or classify the***  
25 ***applicants for or participants in such ap-***

1       *prenticeship or other training or retrain-*  
2       *ing, or fail or refuse to refer for employ-*  
3       *ment any individual, in any way that*  
4       *would deprive or tend to deprive any indi-*  
5       *vidual of employment opportunities, or*  
6       *otherwise adversely affect the status of the*  
7       *individual as an employee, because of ge-*  
8       *netic information with respect to the indi-*  
9       *vidual (or information about a request for*  
10       *or receipt of genetic services by such indi-*  
11       *vidual or family member of such indi-*  
12       *vidual); or*

13               *(3) to cause or attempt to cause an*  
14       *employer to discriminate against an ap-*  
15       *plicant for or a participant in such ap-*  
16       *prenticeship or other training or retrain-*  
17       *ing in violation of this title.*

18       **(b) ACQUISITION OF GENETIC INFORMA-**  
19       *TION.—It shall be an unlawful employment*  
20       *practice for an employer, labor organization,*  
21       *or joint labor-management committee de-*  
22       *scribed in subsection (a) to request, require, or*  
23       *purchase genetic information with respect to*  
24       *an individual or a family member of the indi-*  
25       *vidual (or information about a request for the*

1 *receipt of genetic services by such individual*  
2 *or a family member of such individual) ex-*  
3 *cept—*

4 *(1) where the employer, labor organi-*  
5 *zation, or joint labor-management com-*  
6 *mittee inadvertently requests or requires*  
7 *family medical history of the individual*  
8 *or family member of the individual;*

9 *(2) where—*

10 *(A) health or genetic services are*  
11 *offered by the employer, labor organi-*  
12 *zation, or joint labor-management*  
13 *committee, including such services of-*  
14 *fered as part of a bona fide wellness*  
15 *program;*

16 *(B) the individual provides prior,*  
17 *knowing, voluntary, and written au-*  
18 *thorization;*

19 *(C) only the individual (or family*  
20 *member if the family member is re-*  
21 *ceiving genetic services) and the li-*  
22 *icensed health care professional or*  
23 *board certified genetic counselor in-*  
24 *involved in providing such services re-*  
25 *ceive individually identifiable infor-*

1            *mation concerning the results of such*  
2            *services;*

3            *(D) any individually identifiable*  
4            *genetic information provided under*  
5            *subparagraph (C) in connection with*  
6            *the services provided under subpara-*  
7            *graph (A) is only available for pur-*  
8            *poses of such services and shall not be*  
9            *disclosed to the employer, labor orga-*  
10           *nization, or joint labor-management*  
11           *committee except in aggregate terms*  
12           *that do not disclose the identity of spe-*  
13           *cific individuals;*

14           *(3) where the employer, labor organi-*  
15           *zation, or joint labor-management com-*  
16           *mittee requests or requires family medical*  
17           *history from the individual to comply with*  
18           *the certification provisions of section 103*  
19           *of the Family and Medical Leave Act of*  
20           *1993 (29 U.S.C. 2613) or such requirements*  
21           *under State family and medical leave*  
22           *laws;*

23           *(4) where the employer, labor organi-*  
24           *zation, or joint labor-management com-*  
25           *mittee purchases documents that are com-*

1        *mercially and publicly available (including*  
2        *newspapers, magazines, periodicals,*  
3        *and books, but not including medical*  
4        *databases or court records) that include*  
5        *family medical history; or*

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

10            *(A) the employer, labor organiza-*  
11        *tion, or joint labor-management com-*  
12        *mittee provides written notice of the*  
13        *genetic monitoring to the individual;*

14            *(B)(i) the individual provides*  
15        *prior, knowing, voluntary, and writ-*  
16        *ten authorization; or*

17            *(ii) the genetic monitoring is re-*  
18        *quired by Federal or State law;*

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

21            *(D) the monitoring is in compli-*  
22        *ance with—*

23            *(i) any Federal genetic moni-*  
24        *toring regulations, including any*  
25        *such regulations that may be pro-*

1 *mulgated by the Secretary of*  
2 *Labor pursuant to the Occupa-*  
3 *tional Safety and Health Act of*  
4 *1970 (29 U.S.C. 651 et seq.), the*  
5 *Federal Mine Safety and Health*  
6 *Act of 1977 (30 U.S.C. 801 et seq.),*  
7 *or the Atomic Energy Act of 1954*  
8 *(42 U.S.C. 2011 et seq.); or*

9 *(ii) State genetic monitoring*  
10 *regulations, in the case of a State*  
11 *that is implementing genetic mon-*  
12 *itoring regulations under the au-*  
13 *thority of the Occupational Safety*  
14 *and Health Act of 1970 (29 U.S.C.*  
15 *651 et seq.); and*

16 *(E) the employer, labor organiza-*  
17 *tion, or joint labor-management com-*  
18 *mittee, excluding any licensed health*  
19 *care professional or board certified*  
20 *genetic counselor that is involved in*  
21 *the genetic monitoring program, re-*  
22 *ceives the results of the monitoring*  
23 *only in aggregate terms that do not*  
24 *disclose the identity of specific indi-*  
25 *viduals.*

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

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

9       ***(a) TREATMENT OF INFORMATION AS PART OF***  
10 ***CONFIDENTIAL MEDICAL RECORD.—If an em-***  
11 ***ployer, employment agency, labor organiza-***  
12 ***tion, or joint labor-management committee***  
13 ***possesses genetic information about an em-***  
14 ***ployee or member (or information about a re-***  
15 ***quest for or receipt of genetic services by such***  
16 ***employee or member or family member of such***  
17 ***employee or member), such information shall***  
18 ***be maintained on separate forms and in sepa-***  
19 ***rate medical files and be treated as a con-***  
20 ***fidential medical record of the employee or***  
21 ***member.***

22       ***(b) LIMITATION ON DISCLOSURE.—An em-***  
23 ***ployer, employment agency, labor organiza-***  
24 ***tion, or joint labor-management committee***  
25 ***shall not disclose genetic information con-***

1 *cerning an employee or member (or informa-*  
2 *tion about a request for or receipt of genetic*  
3 *services by such employee or member or family*  
4 *member of such employee or member) except—*

5 *(1) to the employee (or family member*  
6 *if the family member is receiving the ge-*  
7 *netic services) or member of a labor orga-*  
8 *nization at the request of the employee or*  
9 *member of such organization;*

10 *(2) to an occupational or other health*  
11 *researcher if the research is conducted in*  
12 *compliance with the regulations and pro-*  
13 *tections provided for under part 46 of title*  
14 *45, Code of Federal Regulations;*

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

17 *(A) the employer, employment*  
18 *agency, labor organization, or joint*  
19 *labor-management committee may dis-*  
20 *close only the genetic information ex-*  
21 *pressly authorized by such order; and*

22 *(B) if the court order was secured*  
23 *without the knowledge of the employee*  
24 *or member to whom the information*  
25 *refers, the employer, employment*

1            *agency, labor organization, or joint*  
2            *labor-management committee shall*  
3            *provide the employee or member with*  
4            *adequate notice to challenge the court*  
5            *order;*

6            *(4) to government officials who are in-*  
7            *vestigating compliance with this title if*  
8            *the information is relevant to the inves-*  
9            *tigation; or*

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

17           **(c) RELATIONSHIP TO HIPAA REGULATION.—**

18           *(1) IN GENERAL.—In the case of an en-*  
19           *tity that is subject to the regulations pro-*  
20           *mulgated by the Secretary of Health and*  
21           *Human Services under part C of title XI of*  
22           *the Social Security Act (42 U.S.C. 1320d et*  
23           *seq.) and section 264 of the Health Insur-*  
24           *ance Portability and Accountability Act of*  
25           *1996 (42 U.S.C. 1320d-2 note), the entity is*

1 *not subject to the provisions of this title*  
2 *that regulate the use and disclosure of in-*  
3 *formation to which such regulation ap-*  
4 *plies.*

5 (2) *RULE OF CONSTRUCTION.—Nothing*  
6 *in paragraph (1) shall affect the applica-*  
7 *tion of protections under this title against*  
8 *discrimination in hiring, firing, pro-*  
9 *motion, or job placement and other un-*  
10 *lawful employment practices that do not*  
11 *relate to the matters to which the regula-*  
12 *tions referred to in paragraph (1) apply.*

13 *SEC. 207. REMEDIES AND ENFORCEMENT.*

14 (a) *EMPLOYEES COVERED BY TITLE VII OF*  
15 *THE CIVIL RIGHTS ACT OF 1964.—*

16 (1) *IN GENERAL.—The powers, rem-*  
17 *edies, and procedures provided in sections*  
18 *705, 706, 707, 709, 710, and 711 of the Civil*  
19 *Rights Act of 1964 (42 U.S.C. 2000e–4 et*  
20 *seq.) to the Commission, the Attorney Gen-*  
21 *eral, or any person, alleging a violation of*  
22 *title VII of that Act (42 U.S.C. 2000e et*  
23 *seq.) shall be the powers, remedies, and*  
24 *procedures this title provides to the Com-*  
25 *mission, the Attorney General, or any per-*

1        *son, respectively, alleging an unlawful*  
2        *employment practice in violation of this*  
3        *title against an employee described in sec-*  
4        *tion 201(2)(A)(i), except as provided in*  
5        *paragraphs (2) and (3).*

6            (2) *COSTS AND FEES.—The powers, rem-*  
7        *edies, and procedures provided in sub-*  
8        *sections (b) and (c) of section 722 of the*  
9        *Revised Statutes (42 U.S.C. 1988), shall be*  
10       *powers, remedies, and procedures this*  
11       *title provides to the Commission, the At-*  
12       *torney General, or any person, alleging*  
13       *such a practice.*

14           (3) *DAMAGES.—The powers, remedies,*  
15       *and procedures provided in section 1977A*  
16       *of the Revised Statutes (42 U.S.C. 1981a),*  
17       *including the limitations contained in*  
18       *subsection (b)(3) of such section 1977A,*  
19       *shall be powers, remedies, and procedures*  
20       *this title provides to the Commission, the*  
21       *Attorney General, or any person, alleging*  
22       *such a practice (not an employment prac-*  
23       *tice specifically excluded from coverage*  
24       *under section 1977A(a)(1) of the Revised*  
25       *Statutes).*

1       **(b) EMPLOYEES COVERED BY GOVERNMENT**  
2 **EMPLOYEE RIGHTS ACT OF 1991.—**

3           **(1) IN GENERAL.—***The powers, remedies, and procedures provided in sections*  
4 *302 and 304 of the Government Employee*  
5 *Rights Act of 1991 (42 U.S.C. 2000e–16b,*  
6 *2000e–16c) to the Commission, or any per-*  
7 *son, alleging a violation of section*  
8 *302(a)(1) of that Act (42 U.S.C. 2000e–*  
9 *16b(a)(1)) shall be the powers, remedies,*  
10 *and procedures this title provides to the*  
11 *Commission, or any person, respectively,*  
12 *alleging an unlawful employment prac-*  
13 *tice in violation of this title against an*  
14 *employee described in section*  
15 *201(2)(A)(ii), except as provided in para-*  
16 *graphs (2) and (3).*

17  
18           **(2) COSTS AND FEES.—***The powers, remedies, and procedures provided in sub-*  
19 *sections (b) and (c) of section 722 of the*  
20 *Revised Statutes (42 U.S.C. 1988), shall be*  
21 *powers, remedies, and procedures this*  
22 *title provides to the Commission, or any*  
23 *person, alleging such a practice.*  
24

1           **(3) DAMAGES.—***The powers, remedies,*  
2           *and procedures provided in section 1977A*  
3           *of the Revised Statutes (42 U.S.C. 1981a),*  
4           *including the limitations contained in*  
5           *subsection (b)(3) of such section 1977A,*  
6           *shall be powers, remedies, and procedures*  
7           *this title provides to the Commission, or*  
8           *any person, alleging such a practice (not*  
9           *an employment practice specifically ex-*  
10           *cluded from coverage under section*  
11           *1977A(a)(1) of the Revised Statutes).*

12           **(c) EMPLOYEES COVERED BY CONGRESSIONAL**  
13 **ACCOUNTABILITY ACT OF 1995.—**

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

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

3 (2) *COSTS AND FEES.—The powers, rem-*  
4 *edies, and procedures provided in sub-*  
5 *sections (b) and (c) of section 722 of the*  
6 *Revised Statutes (42 U.S.C. 1988), shall be*  
7 *powers, remedies, and procedures this*  
8 *title provides to that Board, or any per-*  
9 *son, alleging such a practice.*

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

21 (4) *OTHER APPLICABLE PROVISIONS.—*  
22 *With respect to a claim alleging a prac-*  
23 *tice described in paragraph (1), title III of*  
24 *the Congressional Accountability Act of*  
25 *1995 (2 U.S.C. 1381 et seq.) shall apply in*

1 *the same manner as such title applies*  
2 *with respect to a claim alleging a viola-*  
3 *tion of section 201(a)(1) of such Act (2*  
4 *U.S.C. 1311(a)(1)).*

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

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

21 *(2) COSTS AND FEES.—The powers, rem-*  
22 *edies, and procedures provided in sub-*  
23 *sections (b) and (c) of section 722 of the*  
24 *Revised Statutes (42 U.S.C. 1988), shall be*  
25 *powers, remedies, and procedures this*

1 *title provides to the President, the Com-*  
2 *mission, such Board, or any person, alleg-*  
3 *ing such a practice.*

4 (3) *DAMAGES.—The powers, remedies,*  
5 *and procedures provided in section 1977A*  
6 *of the Revised Statutes (42 U.S.C. 1981a),*  
7 *including the limitations contained in*  
8 *subsection (b)(3) of such section 1977A,*  
9 *shall be powers, remedies, and procedures*  
10 *this title provides to the President, the*  
11 *Commission, such Board, or any person,*  
12 *alleging such a practice (not an employ-*  
13 *ment practice specifically excluded from*  
14 *coverage under section 1977A(a)(1) of the*  
15 *Revised Statutes).*

16 (e) *EMPLOYEES COVERED BY SECTION 717 OF*  
17 *THE CIVIL RIGHTS ACT OF 1964.—*

18 (1) *IN GENERAL.—The powers, rem-*  
19 *edies, and procedures provided in section*  
20 *717 of the Civil Rights Act of 1964 (42*  
21 *U.S.C. 2000e–16) to the Commission, the*  
22 *Attorney General, the Librarian of Con-*  
23 *gress, or any person, alleging a violation*  
24 *of that section shall be the powers, rem-*  
25 *edies, and procedures this title provides to*

1 *the Commission, the Attorney General, the*  
2 *Librarian of Congress, or any person, re-*  
3 *spectively, alleging an unlawful employ-*  
4 *ment practice in violation of this title*  
5 *against an employee or applicant de-*  
6 *scribed in section 201(2)(A)(v), except as*  
7 *provided in paragraphs (2) and (3).*

8 (2) *COSTS AND FEES.—The powers, rem-*  
9 *edies, and procedures provided in sub-*  
10 *sections (b) and (c) of section 722 of the*  
11 *Revised Statutes (42 U.S.C. 1988), shall be*  
12 *powers, remedies, and procedures this*  
13 *title provides to the Commission, the At-*  
14 *torney General, the Librarian of Congress,*  
15 *or any person, alleging such a practice.*

16 (3) *DAMAGES.—The powers, remedies,*  
17 *and procedures provided in section 1977A*  
18 *of the Revised Statutes (42 U.S.C. 1981a),*  
19 *including the limitations contained in*  
20 *subsection (b)(3) of such section 1977A,*  
21 *shall be powers, remedies, and procedures*  
22 *this title provides to the Commission, the*  
23 *Attorney General, the Librarian of Con-*  
24 *gress, or any person, alleging such a prac-*  
25 *tice (not an employment practice specifi-*

1 *cally excluded from coverage under sec-*  
2 *tion 1977A(a)(1) of the Revised Statutes).*

3 **(f) DEFINITION.**—*In this section, the term*  
4 *“Commission” means the Equal Employment*  
5 *Opportunity Commission.*

6 **SEC. 208. DISPARATE IMPACT.**

7 **(a) GENERAL RULE.**—*Notwithstanding any*  
8 *other provision of this Act, “disparate impact”,*  
9 *as that term is used in section 703(k) of the*  
10 *Civil Rights Act of 1964 (42 U.S.C. 2000e-2(k)),*  
11 *on the basis of genetic information does not es-*  
12 *tablish a cause of action under this Act.*

13 **(b) COMMISSION.**—*On the date that is 6*  
14 *years after the date of enactment of this Act,*  
15 *there shall be established a commission, to be*  
16 *known as the Genetic Nondiscrimination*  
17 *Study Commission (referred to in this section*  
18 *as the “Commission”) to review the developing*  
19 *science of genetics and to make recommenda-*  
20 *tions to Congress regarding whether to provide*  
21 *a disparate impact cause of action under this*  
22 *Act.*

23 **(c) MEMBERSHIP.**—

1           ***(1) IN GENERAL.—The Commission***  
2           ***shall be composed of 8 members, of***  
3           ***which—***

4                   ***(A) 1 member shall be appointed***  
5                   ***by the Majority Leader of the Senate;***

6                   ***(B) 1 member shall be appointed***  
7                   ***by the Minority Leader of the Senate;***

8                   ***(C) 1 member shall be appointed***  
9                   ***by the Chairman of the Committee on***  
10                  ***Health, Education, Labor, and Pen-***  
11                  ***sions of the Senate;***

12                  ***(D) 1 member shall be appointed***  
13                  ***by the ranking minority member of the***  
14                  ***Committee on Health, Education,***  
15                  ***Labor, and Pensions of the Senate;***

16                  ***(E) 1 member shall be appointed***  
17                  ***by the Speaker of the House of Rep-***  
18                  ***resentatives;***

19                  ***(F) 1 member shall be appointed***  
20                  ***by the Minority Leader of the House of***  
21                  ***Representatives;***

22                  ***(G) 1 member shall be appointed***  
23                  ***by the Chairman of the Committee on***  
24                  ***Education and the Workforce of the***  
25                  ***House of Representatives; and***

1           ***(H) 1 member shall be appointed***  
2           ***by the ranking minority member of the***  
3           ***Committee on Education and the***  
4           ***Workforce of the House of Representa-***  
5           ***tives.***

6           ***(2) COMPENSATION AND EXPENSES.—The***  
7           ***members of the Commission shall not re-***  
8           ***ceive compensation for the performance of***  
9           ***services for the Commission, but shall be***  
10          ***allowed travel expenses, including per***  
11          ***diem in lieu of subsistence, at rates au-***  
12          ***thorized for employees of agencies under***  
13          ***subchapter I of chapter 57 of title 5,***  
14          ***United States Code, while away from their***  
15          ***homes or regular places of business in the***  
16          ***performance of services for the Commis-***  
17          ***sion.***

18          ***(d) ADMINISTRATIVE PROVISIONS.—***

19               ***(1) LOCATION.—The Commission shall***  
20               ***be located in a facility maintained by the***  
21               ***Equal Employment Opportunity Commis-***  
22               ***sion.***

23               ***(2) DETAIL OF GOVERNMENT EMPLOY-***  
24               ***EES.—Any Federal Government employee***  
25               ***may be detailed to the Commission with-***

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

4            (3) *INFORMATION FROM FEDERAL AGEN-*  
5        *CIES.—The Commission may secure di-*  
6        *rectly from any Federal department or*  
7        *agency such information as the Commis-*  
8        *sion considers necessary to carry out the*  
9        *provisions of this section. Upon request of*  
10       *the Commission, the head of such depart-*  
11       *ment or agency shall furnish such infor-*  
12       *mation to the Commission.*

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

21           (5) *POSTAL SERVICES.—The Commission*  
22       *may use the United States mails in the*  
23       *same manner and under the same condi-*  
24       *tions as other departments and agencies*  
25       *of the Federal Government.*

1       ***(e) REPORT.—Not later than 1 year after all***  
2 ***of the members are appointed to the Commis-***  
3 ***sion under subsection (c)(1), the Commission***  
4 ***shall submit to Congress a report that summa-***  
5 ***rizes the findings of the Commission and***  
6 ***makes such recommendations for legislation***  
7 ***as are consistent with this Act.***

8       ***(f) AUTHORIZATION OF APPROPRIATIONS.—***  
9 ***There are authorized to be appropriated to the***  
10 ***Equal Employment Opportunity Commission***  
11 ***such sums as may be necessary to carry out***  
12 ***this section.***

13 ***SEC. 209. CONSTRUCTION.***

14       ***Nothing in this title shall be construed***  
15 ***to—***

16               ***(1) limit the rights or protections of***  
17 ***an individual under the Americans with***  
18 ***Disabilities Act of 1990 (42 U.S.C. 12101 et***  
19 ***seq.), including coverage afforded to indi-***  
20 ***viduals under section 102 of such Act (42***  
21 ***U.S.C. 12112), or under the Rehabilitation***  
22 ***Act of 1973 (29 U.S.C. 701 et seq.);***

23               ***(2)(A) limit the rights or protections of***  
24 ***an individual to bring an action under***  
25 ***this title against an employer, employ-***

1 *ment agency, labor organization, or joint*  
2 *labor-management committee for a viola-*  
3 *tion of this title; or*

4 *(B) establish a violation under this*  
5 *title for an employer, employment agency,*  
6 *labor organization, or joint labor-man-*  
7 *agement committee of a provision of the*  
8 *amendments made by title I;*

9 *(3) limit the rights or protections of*  
10 *an individual under any other Federal or*  
11 *State statute that provides equal or great-*  
12 *er protection to an individual than the*  
13 *rights or protections provided for under*  
14 *this title;*

15 *(4) apply to the Armed Forces Reposi-*  
16 *tory of Specimen Samples for the Identi-*  
17 *fication of Remains;*

18 *(5) limit or expand the protections,*  
19 *rights, or obligations of employees or em-*  
20 *ployers under applicable workers' com-*  
21 *ensation laws;*

22 *(6) limit the authority of a Federal de-*  
23 *partment or agency to conduct or sponsor*  
24 *occupational or other health research*  
25 *that is conducted in compliance with the*

1 *regulations contained in part 46 of title*  
2 *45, Code of Federal Regulations (or any*  
3 *corresponding or similar regulation or*  
4 *rule); and*

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

11 *SEC. 210. MEDICAL INFORMATION THAT IS NOT GENETIC*  
12 *INFORMATION.*

13 *An employer, employment agency, labor or-*  
14 *ganization, or joint labor-management com-*  
15 *mittee shall not be considered to be in viola-*  
16 *tion of this title based on the use, acquisition,*  
17 *or disclosure of medical information that is*  
18 *not genetic information about a manifested*  
19 *disease, disorder, or pathological condition of*  
20 *an employee or member, including a mani-*  
21 *fested disease, disorder, or pathological condi-*  
22 *tion that has or may have a genetic basis.*

23 *SEC. 211. REGULATIONS.*

24 *Not later than 1 year after the date of en-*  
25 *actment of this title, the Commission shall*

1 *issue final regulations in an accessible format*  
2 *to carry out this title.*

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

4 *There are authorized to be appropriated*  
5 *such sums as may be necessary to carry out*  
6 *this title (except for section 208).*

7 **SEC. 213. EFFECTIVE DATE.**

8 *This title takes effect on the date that is 18*  
9 *months after the date of enactment of this Act.*

10 **TITLE III—MISCELLANEOUS**  
11 **PROVISION**

12 **SEC. 301. SEVERABILITY.**

13 *If any provision of this Act, an amendment*  
14 *made by this Act, or the application of such*  
15 *provision or amendment to any person or cir-*  
16 *cumstance is held to be unconstitutional, the*  
17 *remainder of this Act, the amendments made*  
18 *by this Act, and the application of such provi-*  
19 *sions to any person or circumstance shall not*  
20 *be affected thereby.*



Union Calendar No. 46

110<sup>TH</sup> CONGRESS  
1<sup>ST</sup> Session

**H. R. 493**

[Report No. 110-28, Parts I, II, and III]

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**A BILL**

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

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MARCH 29, 2007

Reported from the Committee on Energy and Commerce with an amendment; committed to the Committee of the Whole House on the State of the Union and ordered to be printed