

# Calendar No. 97

110TH CONGRESS  
1ST SESSION

# S. 358

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

---

## IN THE SENATE OF THE UNITED STATES

JANUARY 22, 2007

Ms. SNOWE (for herself, Mr. KENNEDY, Mr. ENZI, Mr. DODD, Mr. GREGG, Mr. HARKIN, Ms. MURKOWSKI, Ms. MIKULSKI, Mr. HATCH, Mr. BINGAMAN, Mr. ALLARD, Mrs. MURRAY, Mr. REED, Mrs. CLINTON, Mr. OBAMA, Mr. SANDERS, Mr. BROWN, Mr. BIDEN, Mr. LAUTENBERG, Mr. NELSON of Florida, Mr. SALAZAR, Mr. CARDIN, Ms. COLLINS, Mr. LEAHY, Ms. CANTWELL, Mr. WARNER, Mr. HAGEL, Mr. MENENDEZ, and Mr. SPECTER) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

MARCH 29, 2007

Reported by Mr. KENNEDY, with an amendment

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

---

## 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,*

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

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

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

Sec. 1. Short title; table of contents.

Sec. 2. Findings.

**TITLE I—GENETIC NONDISCRIMINATION IN HEALTH INSURANCE**

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

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

Sec. 103. Amendments to 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.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

8 (1) Deciphering the sequence of the human ge-  
9 nome and other advances in genetics open major  
10 new opportunities for medical progress. New knowl-  
11 edge about the genetic basis of illness will allow for

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

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

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

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

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

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

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

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

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

6 (a) PROHIBITION OF HEALTH DISCRIMINATION ON  
 7 THE BASIS OF GENETIC INFORMATION OR GENETIC  
 8 SERVICES.—

9 (1) NO ENROLLMENT RESTRICTION FOR GE-  
 10 NETIC SERVICES.—Section 702(a)(1)(F) of the Em-  
 11 ployee Retirement Income Security Act of 1974 (29  
 12 U.S.C. 1182(a)(1)(F)) is amended by inserting be-  
 13 fore the period the following: “(including informa-  
 14 tion about a request for or receipt of genetic services  
 15 by an individual or family member of such indi-  
 16 vidual)”.

17 (2) NO DISCRIMINATION IN GROUP PREMIUMS  
 18 BASED ON GENETIC INFORMATION.—Section 702(b)  
 19 of the Employee Retirement Income Security Act of  
 20 1974 (29 U.S.C. 1182(b)) is amended—

21 (A) in paragraph (2)(A), by inserting be-  
 22 fore the semicolon the following: “except as pro-  
 23 vided in paragraph (3)”;

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

1           “(3) NO DISCRIMINATION IN GROUP PREMIUMS  
 2           BASED ON GENETIC INFORMATION.—For purposes  
 3           of this section, a group health plan, or a health in-  
 4           surance issuer offering group health insurance cov-  
 5           erage in connection with a group health plan, shall  
 6           not adjust premium or contribution amounts for a  
 7           group on the basis of genetic information concerning  
 8           an individual in the group or a family member of the  
 9           individual (including information about a request for  
 10          or receipt of genetic services by an individual or  
 11          family member of such individual).”.

12          (b) LIMITATIONS ON GENETIC TESTING.—Section  
 13          702 of the Employee Retirement Income Security Act of  
 14          1974 (29 U.S.C. 1182) is amended by adding at the end  
 15          the following:

16          “(c) GENETIC TESTING.—

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

23                 “(2) RULE OF CONSTRUCTION.—Nothing in  
 24                 this part shall be construed to—

1           “(A) limit the authority of a health care  
2 professional who is providing health care serv-  
3 ices with respect to an individual to request  
4 that such individual or a family member of such  
5 individual undergo a genetic test;

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

15           “(C) authorize or permit a health care pro-  
16 fessional to require that an individual undergo  
17 a genetic test.

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

22           “(e) REMEDIES AND ENFORCEMENT.—Section 502 of  
23 the Employee Retirement Income Security Act of 1974  
24 (29 U.S.C. 1132) is amended by adding at the end the  
25 following:



1       “(n) ENFORCEMENT OF GENETIC NONDISCRIMINA-  
2       TION REQUIREMENTS.—

3               “(1) INJUNCTIVE RELIEF FOR IRREPARABLE  
4       HARM.—With respect to any violation of subsection  
5       (a)(1)(F), (b)(3), or (c) of section 702, a participant  
6       or beneficiary may seek relief under subsection  
7       502(a)(1)(B) prior to the exhaustion of available ad-  
8       ministrative remedies under section 503 if it is dem-  
9       onstrated to the court, by a preponderance of the  
10      evidence, that the exhaustion of such remedies would  
11      cause irreparable harm to the health of the partici-  
12      pant or beneficiary. Any determinations that already  
13      have been made under section 503 in such case, or  
14      that are made in such case while an action under  
15      this paragraph is pending, shall be given due consid-  
16      eration by the court in any action under this sub-  
17      section in such case.

18              “(2) EQUITABLE RELIEF FOR GENETIC NON-  
19      DISCRIMINATION.—

20              “(A) REINSTATEMENT OF BENEFITS  
21      WHERE EQUITABLE RELIEF HAS BEEN AWARD-  
22      ED.—The recovery of benefits by a participant  
23      or beneficiary under a civil action under this  
24      section may include an administrative penalty  
25      under subparagraph (B) and the retroactive re-

1 instatement of coverage under the plan involved  
 2 to the date on which the participant or bene-  
 3 ficiary was denied eligibility for coverage if—

4 “(i) the civil action was commenced  
 5 under subsection (a)(1)(B); and

6 “(ii) the denial of coverage on which  
 7 such civil action was based constitutes a  
 8 violation of subsection (a)(1)(F), (b)(3), or  
 9 (e) of section 702.

10 “(B) ADMINISTRATIVE PENALTY.—

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

20 “(ii) NONCOMPLIANCE PERIOD.—For  
 21 purposes of clause (i), the term ‘non-  
 22 compliance period’ means the period—

23 “(I) beginning on the date that a  
 24 failure described in clause (i) occurs;  
 25 and

1                   “(H) ending on the date that  
2                   such failure is corrected.

3                   “(iii) PAYMENT TO PARTICIPANT OR  
4                   BENEFICIARY.—A penalty collected under  
5                   this subparagraph shall be paid to the par-  
6                   ticipant or beneficiary involved.

7                   “(3) SECRETARIAL ENFORCEMENT AUTHOR-  
8                   ITY.—

9                   “(A) GENERAL RULE.—The Secretary has  
10                  the authority to impose a penalty on any failure  
11                  of a group health plan to meet the requirements  
12                  of subsection (a)(1)(F), (b)(3), or (c) of section  
13                  702.

14                  “(B) AMOUNT.—

15                  “(i) IN GENERAL.—The amount of  
16                  the penalty imposed by subparagraph (A)  
17                  shall be \$100 for each day in the non-  
18                  compliance period with respect to each in-  
19                  dividual to whom such failure relates.

20                  “(ii) NONCOMPLIANCE PERIOD.—For  
21                  purposes of this paragraph, the term ‘non-  
22                  compliance period’ means, with respect to  
23                  any failure, the period—

24                                 “(I) beginning on the date such  
25                                 failure first occurs; and

1                   “(H) ending on the date such  
2                   failure is corrected.

3                   “(C) MINIMUM PENALTIES WHERE FAIL-  
4                   URE DISCOVERED.—Notwithstanding clauses (i)  
5                   and (ii) of subparagraph (D):

6                   “(i) IN GENERAL.—In the case of 1 or  
7                   more failures with respect to an indi-  
8                   vidual—

9                   “(I) which are not corrected be-  
10                   fore the date on which the plan re-  
11                   ceives a notice from the Secretary of  
12                   such violation; and

13                   “(II) which occurred or continued  
14                   during the period involved;  
15                   the amount of penalty imposed by subpara-  
16                   graph (A) by reason of such failures with  
17                   respect to such individual shall not be less  
18                   than \$2,500.

19                   “(ii) HIGHER MINIMUM PENALTY  
20                   WHERE VIOLATIONS ARE MORE THAN DE  
21                   MINIMIS.—To the extent violations for  
22                   which any person is liable under this para-  
23                   graph for any year are more than de mini-  
24                   mis, clause (i) shall be applied by sub-

1           stituting ‘\$15,000’ for ‘\$2,500’ with re-  
2           spect to such person.

3           “(D) LIMITATIONS.—

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

14                   “(ii) PENALTY NOT TO APPLY TO  
15          FAILURES CORRECTED WITHIN CERTAIN  
16          PERIODS.—No penalty shall be imposed by  
17          subparagraph (A) on any failure if—

18                           “(I) such failure was due to rea-  
19                           sonable cause and not to willful ne-  
20                           glect; and

21                           “(II) such failure is corrected  
22                           during the 30-day period beginning on  
23                           the first date the person otherwise lia-  
24                           ble for such penalty knew, or exer-

1 eising reasonable diligence would have  
2 known, that such failure existed.

3 “(iii) OVERALL LIMITATION FOR UN-  
4 INTENTIONAL FAILURES.—In the case of  
5 failures which are due to reasonable cause  
6 and not to willful neglect, the penalty im-  
7 posed by subparagraph (A) for failures  
8 shall not exceed the amount equal to the  
9 lesser of—

10 “(I) 10 percent of the aggregate  
11 amount paid or incurred by the em-  
12 ployer (or predecessor employer) dur-  
13 ing the preceding taxable year for  
14 group health plans; or

15 “(II) \$500,000.

16 “(E) WAIVER BY SECRETARY.—In the case  
17 of a failure which is due to reasonable cause  
18 and not to willful neglect, the Secretary may  
19 waive part or all of the penalty imposed by sub-  
20 paragraph (A) to the extent that the payment  
21 of such penalty would be excessive relative to  
22 the failure involved.”

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

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

3           “(A) the spouse of the individual;

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

7           “(C) all other individuals related by blood  
8 to the individual or the spouse or child de-  
9 scribed in subparagraph (A) or (B).

10          “(6) GENETIC INFORMATION.—

11          “(A) IN GENERAL.—Except as provided in  
12 subparagraph (B), the term ‘genetic informa-  
13 tion’ means information about—

14           “(i) an individual’s genetic tests;

15           “(ii) the genetic tests of family mem-  
16 bers of the individual; or

17           “(iii) the occurrence of a disease or  
18 disorder in family members of the indi-  
19 vidual.

20          “(B) EXCLUSIONS.—The term ‘genetic in-  
21 formation’ shall not include information about  
22 the sex or age of an individual.

23          “(7) GENETIC TEST.—

24          “(A) IN GENERAL.—The term ‘genetic  
25 test’ means an analysis of human DNA, RNA,

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

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

6 “(i) an analysis of proteins or metabo-  
 7 lites that does not detect genotypes,  
 8 mutations, or chromosomal changes; or

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

16 “(8) GENETIC SERVICES.—The term ‘genetic  
 17 services’ means—

18 “(A) a genetic test;

19 “(B) genetic counseling (such as obtaining,  
 20 interpreting, or assessing genetic information);  
 21 or

22 “(C) genetic education.”

23 (e) REGULATIONS AND EFFECTIVE DATE.—

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



1 Labor shall issue final regulations in an accessible  
 2 format to carry out the amendments made by this  
 3 section.

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

9 **SEC. 102. AMENDMENTS TO THE PUBLIC HEALTH SERVICE**  
 10 **ACT.**

11 (a) AMENDMENTS RELATING TO THE GROUP MAR-  
 12 KET.—

13 (1) PROHIBITION OF HEALTH DISCRIMINATION  
 14 ON THE BASIS OF GENETIC INFORMATION OR GE-  
 15 NETIC SERVICES.—

16 (A) NO ENROLLMENT RESTRICTION FOR  
 17 GENETIC SERVICES.—Section 2702(a)(1)(F) of  
 18 the Public Health Service Act (42 U.S.C.  
 19 300gg-1(a)(1)(F)) is amended by inserting be-  
 20 fore the period the following: “(including infor-  
 21 mation about a request for or receipt of genetic  
 22 services by an individual or family member of  
 23 such individual)”.

24 (B) NO DISCRIMINATION IN GROUP PRE-  
 25 MIUMS BASED ON GENETIC INFORMATION.—

1 Section 2702(b) of the Public Health Service  
2 Act (42 U.S.C. 300gg-1(b)) is amended—

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

6 (ii) by adding at the end the fol-  
7 lowing:

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

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

23 “(e) GENETIC TESTING.—

24 “(1) LIMITATION ON REQUESTING OR REQUIR-  
25 ING GENETIC TESTING.—A group health plan, or a

1 health insurance issuer offering health insurance  
2 coverage in connection with a group health plan,  
3 shall not request or require an individual or a family  
4 member of such individual to undergo a genetic test.

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

7 “(A) limit the authority of a health care  
8 professional who is providing health care serv-  
9 ices with respect to an individual to request  
10 that such individual or a family member of such  
11 individual undergo a genetic test;

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

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

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

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

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

7           “~~(3)~~ ENFORCEMENT AUTHORITY RELATING TO  
8           GENETIC DISCRIMINATION.—

9           “~~(A)~~ GENERAL RULE.—In the cases de-  
10           scribed in paragraph (1), notwithstanding the  
11           provisions of paragraph (2)(C), the following  
12           provisions shall apply with respect to an action  
13           under this subsection by the Secretary with re-  
14           spect to any failure of a health insurance issuer  
15           in connection with a group health plan, to meet  
16           the requirements of subsection (a)(1)(F),  
17           (b)~~(3)~~, or (e) of section 2702.

18           “~~(B)~~ AMOUNT.—

19           “~~(i)~~ IN GENERAL.—The amount of  
20           the penalty imposed under this paragraph  
21           shall be \$100 for each day in the non-  
22           compliance period with respect to each in-  
23           dividual to whom such failure relates.

24           “~~(ii)~~ NONCOMPLIANCE PERIOD.—For  
25           purposes of this paragraph, the term ‘non-

1 compliance period<sup>1</sup> means, with respect to  
2 any failure, the period—

3 “(I) beginning on the date such  
4 failure first occurs; and

5 “(II) ending on the date such  
6 failure is corrected.

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

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

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

17 “(II) which occurred or continued  
18 during the period involved;

19 the amount of penalty imposed by subpara-  
20 graph (A) by reason of such failures with  
21 respect to such individual shall not be less  
22 than \$2,500.

23 “(ii) HIGHER MINIMUM PENALTY  
24 WHERE VIOLATIONS ARE MORE THAN DE  
25 MINIMIS.—To the extent violations for

1 which any person is liable under this para-  
2 graph for any year are more than de mini-  
3 mis, clause (i) shall be applied by sub-  
4 stituting ‘\$15,000’ for ‘\$2,500’ with re-  
5 spect to such person.

6 ~~“(D) LIMITATIONS.—~~

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

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

21 ~~“(I) such failure was due to rea-~~  
22 ~~sonable cause and not to willful ne-~~  
23 ~~glect; and~~

24 ~~“(II) such failure is corrected~~  
25 ~~during the 30-day period beginning on~~

1 the first date the person otherwise lia-  
 2 ble for such penalty knew, or exer-  
 3 cising reasonable diligence would have  
 4 known, that such failure existed.

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

12 “(I) 10 percent of the aggregate  
 13 amount paid or incurred by the em-  
 14 ployer (or predecessor employer) dur-  
 15 ing the preceding taxable year for  
 16 group health plans; or

17 “(II) \$500,000.

18 “(E) WAIVER BY SECRETARY.—In the case  
 19 of a failure which is due to reasonable cause  
 20 and not to willful neglect, the Secretary may  
 21 waive part or all of the penalty imposed by sub-  
 22 paragraph (A) to the extent that the payment  
 23 of such penalty would be excessive relative to  
 24 the failure involved.”

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

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

6                   “(A) the spouse of the individual;

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

10                   “(C) all other individuals related by blood  
 11           to the individual or the spouse or child de-  
 12           scribed in subparagraph (A) or (B).

13           “(16) GENETIC INFORMATION.—

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

17                           “(i) an individual’s genetic tests;

18                           “(ii) the genetic tests of family mem-  
 19           bers of the individual; or

20                           “(iii) the occurrence of a disease or  
 21           disorder in family members of the indi-  
 22           vidual.

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



1           “(17) GENETIC TEST.—

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

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

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

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

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

21           “(A) a genetic test;

22           “(B) genetic counseling (such as obtaining,  
23 interpreting, or assessing genetic information);  
24 or

25           “(C) genetic education.”.

1 (b) AMENDMENT RELATING TO THE INDIVIDUAL  
2 MARKET.—

3 (1) IN GENERAL.—The first subpart 3 of part  
4 B of title XXVII of the Public Health Service Act  
5 (42 U.S.C. 300gg-51 et seq.) (relating to other re-  
6 quirements) is amended—

7 (A) by redesignating such subpart as sub-  
8 part 2; and

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

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

12 “(a) PROHIBITION ON GENETIC INFORMATION AS A  
13 CONDITION OF ELIGIBILITY.—A health insurance issuer  
14 offering health insurance coverage in the individual mar-  
15 ket may not establish rules for the eligibility (including  
16 continued eligibility) of any individual to enroll in indi-  
17 vidual health insurance coverage based on genetic infor-  
18 mation (including information about a request for or re-  
19 ceipt of genetic services by an individual or family member  
20 of such individual).

21 “(b) PROHIBITION ON GENETIC INFORMATION IN  
22 SETTING PREMIUM RATES.—A health insurance issuer of-  
23 fering health insurance coverage in the individual market  
24 shall not adjust premium or contribution amounts for an  
25 individual on the basis of genetic information concerning

1 the individual or a family member of the individual (in-  
2 cluding information about a request for or receipt of ge-  
3 netic services by an individual or family member of such  
4 individual).

5 “(e) GENETIC TESTING.—

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

12 “(2) RULE OF CONSTRUCTION.—Nothing in  
13 this part shall be construed to—

14 “(A) limit the authority of a health care  
15 professional who is providing health care serv-  
16 ices with respect to an individual to request  
17 that such individual or a family member of such  
18 individual undergo a genetic test;

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

1 test or to provide information to such individual  
2 regarding such genetic test; or

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

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

9 “(b) ~~SECRETARIAL ENFORCEMENT AUTHORITY.—~~  
10 The Secretary shall have the same authority in relation  
11 to enforcement of the provisions of this part with respect  
12 to issuers of health insurance coverage in the individual  
13 market in a State as the Secretary has under section  
14 2722(b)(2), and section 2722(b)(3) with respect to viola-  
15 tions of genetic nondiscrimination provisions; in relation  
16 to the enforcement of the provisions of part A with respect  
17 to issuers of health insurance coverage in the small group  
18 market in the State.”.

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

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

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

5           “(D) ELECTION NOT APPLICABLE TO RE-  
6 QUIREMENTS CONCERNING GENETIC INFORMA-  
7 TION.—The election described in subparagraph  
8 (A) shall not be available with respect to the  
9 provisions of subsections (a)(1)(F) and (e) of  
10 section 2702 and the provisions of section  
11 2702(b) to the extent that such provisions  
12 apply to genetic information (or information  
13 about a request for or the receipt of genetic  
14 services by an individual or a family member of  
15 such individual).”.

16       (d) REGULATIONS AND EFFECTIVE DATE.—

17           (1) REGULATIONS.—Not later than 1 year after  
18 the date of enactment of this title, the Secretary of  
19 Labor and the Secretary of Health and Human  
20 Services (as the case may be) shall issue final regu-  
21 lations in an accessible format to carry out the  
22 amendments made by this section.

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

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

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

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

13 (a) NONDISCRIMINATION.—

14 (1) IN GENERAL.—Section 1882(s)(2) of the  
 15 Social Security Act (42 U.S.C. 1395ss(s)(2)) is  
 16 amended by adding at the end the following:

17           “(E)(i) An issuer of a medicare supple-  
 18 mental policy shall not deny or condition the  
 19 issuance or effectiveness of the policy, and shall  
 20 not discriminate in the pricing of the policy (in-  
 21 cluding the adjustment of premium rates) of an  
 22 eligible individual on the basis of genetic infor-  
 23 mation concerning the individual (or informa-  
 24 tion about a request for, or the receipt of, ge-

1           netic services by such individual or family mem-  
2           ber of such individual).

3           “(ii) For purposes of clause (i), the terms  
4           ‘family member’, ‘genetic services’, and ‘genetic  
5           information’ shall have the meanings given such  
6           terms in subsection (x).”.

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

11         (b) LIMITATIONS ON GENETIC TESTING.—

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

15         “(x) LIMITATIONS ON GENETIC TESTING.—

16           “(1) GENETIC TESTING.—

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

22           “(B) RULE OF CONSTRUCTION.—Nothing  
23          in this title shall be construed to—

24           “(i) limit the authority of a health  
25          care professional who is providing health

1 care services with respect to an individual  
 2 to request that such individual or a family  
 3 member of such individual undergo a ge-  
 4 netic test;

5 “(ii) limit the authority of a health  
 6 care professional who is employed by or af-  
 7 filiated with an issuer of a medicare sup-  
 8 plemental policy and who is providing  
 9 health care services to an individual as  
 10 part of a bona fide wellness program to no-  
 11 tify such individual of the availability of a  
 12 genetic test or to provide information to  
 13 such individual regarding such genetic test;  
 14 or

15 “(iii) authorize or permit a health  
 16 care professional to require that an indi-  
 17 vidual undergo a genetic test.

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

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

21 “(i) the spouse of the individual;

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



1           “(iii) any other individuals related by  
2 blood to the individual or to the spouse or  
3 child described in clause (i) or (ii).

4           “(B) GENETIC INFORMATION.—

5           “(i) IN GENERAL.—Except as pro-  
6 vided in clause (ii), the term ‘genetic infor-  
7 mation’ means information about—

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

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

11                   “(III) the occurrence of a disease  
12 or disorder in family members of the  
13 individual.

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

17           “(C) GENETIC TEST.—

18           “(i) IN GENERAL.—The term ‘genetic  
19 test’ means an analysis of human DNA,  
20 RNA, chromosomes, proteins, or metabo-  
21 lites, that detects genotypes, mutations, or  
22 chromosomal changes.

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

1           “(I) an analysis of proteins or  
2           metabolites that does not detect  
3           genotypes, mutations, or chromosomal  
4           changes; or

5           “(II) an analysis of proteins or  
6           metabolites that is directly related to  
7           a manifested disease, disorder, or  
8           pathological condition that could rea-  
9           sonably be detected by a health care  
10          professional with appropriate training  
11          and expertise in the field of medicine  
12          involved.

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

15           “(i) a genetic test;

16           “(ii) genetic counseling (such as ob-  
17          taining, interpreting, or assessing genetic  
18          information); or

19           “(iii) genetic education.

20           “(E) ISSUER OF A MEDICARE SUPPLE-  
21          MENTAL POLICY.—The term ‘issuer of a medi-  
22          care supplemental policy’ includes a third-party  
23          administrator or other person acting for or on  
24          behalf of such issuer.”.

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

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

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

13          (c) TRANSITION PROVISIONS.—

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

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

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

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

20 (4) DATE SPECIFIED.—

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

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

1 latory program to the changes made by  
2 this section; or

3 (ii) October 1, 2008.

4 ~~(B) ADDITIONAL LEGISLATIVE ACTION RE-~~  
5 ~~QUIRED.—~~In the case of a State which the Sec-  
6 retary identifies as—

7 (i) requiring State legislation (other  
8 than legislation appropriating funds) to  
9 conform its regulatory program to the  
10 changes made in this section; but

11 (ii) having a legislature which is not  
12 scheduled to meet in 2008 in a legislative  
13 session in which such legislation may be  
14 considered; the date specified in this para-  
15 graph is the first day of the first calendar  
16 quarter beginning after the close of the  
17 first legislative session of the State legisla-  
18 ture that begins on or after July 1, 2008.  
19 For purposes of the previous sentence, in  
20 the case of a State that has a 2-year legis-  
21 lative session; each year of such session  
22 shall be deemed to be a separate regular  
23 session of the State legislature.

1 **SEC. 104. PRIVACY AND CONFIDENTIALITY.**

2 (a) **APPLICABILITY.**—Except as provided in sub-  
 3 section (d), the provisions of this section shall apply to  
 4 group health plans, health insurance issuers (including  
 5 issuers in connection with group health plans or individual  
 6 health coverage), and issuers of medicare supplemental  
 7 policies, without regard to—

8 (1) section 732(a) of the Employee Retirement  
 9 Income Security Act of 1974 (29 U.S.C. 1191a(a));

10 (2) section 2721(a) of the Public Health Serv-  
 11 ice Act (42 U.S.C. 300gg-21(a)); and

12 (3) section 9831(a)(2) of the Internal Revenue  
 13 Code of 1986.

14 (b) **COMPLIANCE WITH CERTAIN CONFIDENTIALITY**  
 15 **STANDARDS WITH RESPECT TO GENETIC INFORMA-**  
 16 **TION.**—

17 (1) **IN GENERAL.**—The regulations promulgated  
 18 by the Secretary of Health and Human Services  
 19 under part C of title XI of the Social Security Act  
 20 (42 U.S.C. 1320d et seq.) and section 264 of the  
 21 Health Insurance Portability and Accountability Act  
 22 of 1996 (42 U.S.C. 1320d-2 note) shall apply to the  
 23 use or disclosure of genetic information.

24 (2) **PROHIBITION ON UNDERWRITING AND PRE-**  
 25 **MIUM RATING.**—Notwithstanding paragraph (1), a  
 26 group health plan, a health insurance issuer, or

1 issuer of a medicare supplemental policy shall not  
2 use or disclose genetic information (including infor-  
3 mation about a request for or a receipt of genetic  
4 services by an individual or family member of such  
5 individual) for purposes of underwriting, determina-  
6 tions of eligibility to enroll, premium rating, or the  
7 creation, renewal or replacement of a plan, contract  
8 or coverage for health insurance or health benefits.

9 (c) PROHIBITION ON COLLECTION OF GENETIC IN-  
10 FORMATION.—

11 (1) IN GENERAL.—A group health plan, health  
12 insurance issuer, or issuer of a medicare supple-  
13 mental policy shall not request, require, or purchase  
14 genetic information (including information about a  
15 request for or a receipt of genetic services by an in-  
16 dividual or family member of such individual) for  
17 purposes of underwriting, determinations of eligi-  
18 bility to enroll, premium rating, or the creation, re-  
19 newal or replacement of a plan, contract or coverage  
20 for health insurance or health benefits.

21 (2) LIMITATION RELATING TO THE COLLEC-  
22 TION OF GENETIC INFORMATION PRIOR TO ENROLL-  
23 MENT.—A group health plan, health insurance  
24 issuer, or issuer of a medicare supplemental policy  
25 shall not request, require, or purchase genetic infor-

1       mation (including information about a request for or  
2       a receipt of genetic services by an individual or fam-  
3       ily member of such individual) concerning a partici-  
4       pant, beneficiary, or enrollee prior to the enrollment,  
5       and in connection with such enrollment, of such indi-  
6       vidual under the plan, coverage, or policy.

7           (3) INCIDENTAL COLLECTION.—Where a group  
8       health plan, health insurance issuer, or issuer of a  
9       medicare supplemental policy obtains genetic infor-  
10      mation incidental to the requesting, requiring, or  
11      purchasing of other information concerning a partici-  
12      pant, beneficiary, or enrollee, such request, require-  
13      ment, or purchase shall not be considered a violation  
14      of this subsection if—

15           (A) such request, requirement, or purchase  
16           is not in violation of paragraph (1); and

17           (B) any genetic information (including in-  
18           formation about a request for or receipt of ge-  
19           netic services) requested, required, or purchased  
20           is not used or disclosed in violation of sub-  
21           section (b).

22           (d) APPLICATION OF CONFIDENTIALITY STAND-  
23      ARDS.—The provisions of subsections (b) and (c) shall not  
24      apply—



1           (1) to group health plans, health insurance  
2           issuers, or issuers of medicare supplemental policies  
3           that are not otherwise covered under the regulations  
4           promulgated by the Secretary of Health and Human  
5           Services under part C of title XI of the Social Secu-  
6           rity Act (42 U.S.C. 1320d et seq.) and section 264  
7           of the Health Insurance Portability and Account-  
8           ability Act of 1996 (42 U.S.C. 1320d-2 note); and

9           (2) to genetic information that is not considered  
10          to be individually-identifiable health information  
11          under the regulations promulgated by the Secretary  
12          of Health and Human Services under part C of title  
13          XI of the Social Security Act (42 U.S.C. 1320d et  
14          seq.) and section 264 of the Health Insurance Port-  
15          ability and Accountability Act of 1996 (42 U.S.C.  
16          1320d-2 note).

17          (e) ENFORCEMENT.—A group health plan, health in-  
18          surance issuer, or issuer of a medicare supplemental policy  
19          that violates a provision of this section shall be subject  
20          to the penalties described in sections 1176 and 1177 of  
21          the Social Security Act (42 U.S.C. 1320d-5 and 1320d-  
22          6) in the same manner and to the same extent that such  
23          penalties apply to violations of part C of title XI of such  
24          Act.

25          (f) PREEMPTION.—

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

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 oth-  
16          erwise available under such State law.

17          (g) COORDINATION WITH PRIVACY REGULATIONS.—  
18          The Secretary shall implement and administer this section  
19          in a manner that is consistent with the implementation  
20          and administration by the Secretary of the regulations  
21          promulgated by the Secretary of Health and Human Serv-  
22          ices under part C of title XI of the Social Security Act  
23          (42 U.S.C. 1320d et seq.) and section 264 of the Health  
24          Insurance Portability and Accountability Act of 1996 (42  
25          U.S.C. 1320d–2 note).

1 (h) DEFINITIONS.—In this section:

2 (1) GENETIC INFORMATION; GENETIC SERV-  
 3 ICES.—The terms “family member”, “genetic infor-  
 4 mation”, “genetic services”, and “genetic test” have  
 5 the meanings given such terms in section 2791 of  
 6 the Public Health Service Act (42 U.S.C. 300gg-  
 7 91), as amended by this Act.

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

13 (3) ISSUER OF A MEDICARE SUPPLEMENTAL  
 14 POLICY.—The term “issuer of a medicare supple-  
 15 mental policy” means an issuer described in section  
 16 1882 of the Social Security Act (42 U.S.C. 1395ss).

17 (4) SECRETARY.—The term “Secretary” means  
 18 the Secretary of Health and Human Services.

19 **SEC. 105. ASSURING COORDINATION.**

20 (a) IN GENERAL.—Except as provided in subsection  
 21 (b), the Secretary of the Treasury, the Secretary of Health  
 22 and Human Services, and the Secretary of Labor shall en-  
 23 sure, through the execution of an interagency memo-  
 24 randum of understanding among such Secretaries, that—

1           (1) regulations, rulings, and interpretations  
2 issued by such Secretaries relating to the same mat-  
3 ter over which two or more such Secretaries have re-  
4 sponsibility under this title (and the amendments  
5 made by this title) are administered so as to have  
6 the same effect at all times; and

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

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

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

16       (a) **REGULATIONS.**—Not later than 1 year after the  
17 date of enactment of this title, the Secretary of Labor,  
18 the Secretary of Health and Human Services, and the Sec-  
19 retary of the Treasury shall issue final regulations in an  
20 accessible format to carry out this title.

21       (b) **EFFECTIVE DATE.**—Except as provided in sec-  
22 tion 103, the amendments made by this title shall take  
23 effect on the date that is 18 months after the date of en-  
24 actment of this Act.

1 **TITLE II—PROHIBITING EM-**  
2 **PLOYMENT DISCRIMINATION**  
3 **ON THE BASIS OF GENETIC**  
4 **INFORMATION**

5 **SEC. 201. DEFINITIONS.**

6 In this title:

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

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

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

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

19 (ii) a State employee (including an ap-  
20 plicant) described in section 304(a) of the  
21 Government Employee Rights Act of 1991  
22 (42 U.S.C. 2000e-16e(a));

23 (iii) a covered employee (including an  
24 applicant), as defined in section 101 of the

1 Congressional Accountability Act of 1995  
 2 (~~2 U.S.C. 1301~~);

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

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

9 (B) EMPLOYER.—The term “employer”  
 10 means—

11 (i) an employer (as defined in section  
 12 701(b) of the Civil Rights Act of 1964 (~~42~~  
 13 ~~U.S.C. 2000e(b)~~);

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

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

20 (iv) an employing office, as defined in  
 21 section 411(e) of title ~~3~~, United States  
 22 Code; or

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

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

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

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

11           (A) the spouse of the individual;

12           (B) a dependent child of the individual, in-  
 13           cluding a child who is born to or placed for  
 14           adoption with the individual; and

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

18          (4) GENETIC INFORMATION.—

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

22           (i) an individual’s genetic tests;

23           (ii) the genetic tests of family mem-  
 24           bers 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 in-  
4 formation” shall not include information about  
5 the 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  
9 genetic material, such as chromosomal damage or  
10 evidence of increased occurrence of mutations, that  
11 may have developed in the course of employment due  
12 to exposure to toxic substances in the workplace, in  
13 order to identify, evaluate, and respond to the ef-  
14 fects of or control adverse environmental exposures  
15 in the workplace.

16 (6) GENETIC SERVICES.—The term “genetic  
17 services” means—

18 (A) a genetic test;

19 (B) genetic counseling (such as obtaining,  
20 interpreting or assessing genetic information);  
21 or

22 (C) genetic education.

23 (7) GENETIC TEST.—

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



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

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

8 **SEC. 202. EMPLOYER PRACTICES.**

9 (a) USE OF GENETIC INFORMATION.—It shall be an  
10 unlawful employment practice for an 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  
16 to the employee (or information about a request for  
17 or the receipt of genetic services by such employee  
18 or 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 oppor-  
22 tunities or otherwise adversely affect the status of  
23 the employee as an employee, because of genetic in-  
24 formation with respect to the employee (or informa-  
25 tion about a request for or the receipt of genetic

1 services by such employee or family member of such  
2 employee).

3 (b) ACQUISITION OF GENETIC INFORMATION.—It  
4 shall be an unlawful employment practice for an employer  
5 to request, require, or purchase genetic information with  
6 respect to an employee or a family member of the em-  
7 ployee (or information about a request for the receipt of  
8 genetic services by such employee or a family member of  
9 such employee) 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  
15 by the employer, including such services offered  
16 as 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  
20 if the family member is receiving genetic serv-  
21 ices) and the licensed health care professional  
22 or board certified genetic counselor involved in  
23 providing such services receive individually iden-  
24 tifiable information concerning the results of  
25 such services; and

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

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

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

19          ~~(5)~~ where the information involved is to be used  
20          for genetic monitoring of the biological effects of  
21          toxic 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  
7 regulations, including any such regulations  
8 that may be promulgated by the Secretary  
9 of Labor pursuant to the Occupational  
10 Safety and Health Act of 1970 (29 U.S.C.  
11 651 et seq.); the Federal Mine Safety and  
12 Health Act of 1977 (30 U.S.C. 801 et  
13 seq.); or the Atomic Energy Act of 1954  
14 (42 U.S.C. 2011 et seq.); or

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

21           (E) the employer, excluding any licensed  
22 health care professional or board certified ge-  
23 netic counselor that is involved in the genetic  
24 monitoring program, receives the results of the

1 monitoring only in aggregate terms that do not  
2 disclose the identity of specific employees;

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

9 **SEC. 203. EMPLOYMENT AGENCY PRACTICES.**

10 (a) USE OF GENETIC INFORMATION.—It shall be an  
11 unlawful employment practice for an employment agen-  
12 cy—

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

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

1       quest for or the receipt of genetic services by such  
 2       individual or 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 this  
 5       title.

6       (b) ACQUISITION OF GENETIC INFORMATION.—It  
 7       shall be an unlawful employment practice for an employ-  
 8       ment agency to request, require, or purchase genetic infor-  
 9       mation with respect to an individual or a family member  
 10      of the individual (or information about a request for the  
 11      receipt of genetic services by such individual or a family  
 12      member 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  
 18                   by the employment agency, including such serv-  
 19                   ices offered as part of a bona fide wellness pro-  
 20                   gram;

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

23                   (C) only the individual (or family member  
 24                   if the family member is receiving genetic serv-  
 25                   ices) and the licensed health care professional

1 or board certified genetic counselor involved in  
2 providing such services receive individually iden-  
3 tifiable information concerning the results of  
4 such services; and

5 (D) any individually identifiable genetic in-  
6 formation provided under subparagraph (C) in  
7 connection with the services provided under  
8 subparagraph (A) is only available for purposes  
9 of such services and shall not be disclosed to  
10 the employment agency except in aggregate  
11 terms that do not disclose the identity of spe-  
12 cific individuals;

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

19 (4) where an employment agency purchases  
20 documents that are commercially and publicly avail-  
21 able (including newspapers, magazines, periodicals,  
22 and books, but not including medical databases or  
23 court 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  
3 toxic substances in the workplace, but only if—

4           (A) the employment agency provides writ-  
5 ten notice of the genetic monitoring to the indi-  
6 vidual;

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

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

11          (C) the individual is informed of individual  
12 monitoring results;

13          (D) the monitoring is in compliance with—

14           (i) any Federal genetic monitoring  
15 regulations, including any such regulations  
16 that may be promulgated by the Secretary  
17 of Labor pursuant to the Occupational  
18 Safety and Health Act of 1970 (29 U.S.C.  
19 651 et seq.), the Federal Mine Safety and  
20 Health Act of 1977 (30 U.S.C. 801 et  
21 seq.), or the Atomic Energy Act of 1954  
22 (42 U.S.C. 2011 et seq.); or

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



1 under the authority of the Occupational  
2 Safety and Health Act of 1970 (29 U.S.C.  
3 651 et seq.); and

4 (E) the employment agency, excluding any  
5 licensed health care professional or board cer-  
6 tified genetic counselor that is involved in the  
7 genetic monitoring program; receives the results  
8 of the monitoring only in aggregate terms that  
9 do not disclose the identity of specific individ-  
10 uals;

11 (e) PRESERVATION OF PROTECTIONS.—In the case  
12 of information to which any of paragraphs (1) through  
13 (5) of subsection (b) applies, such information may not  
14 be used in violation of paragraph (1) or (2) of subsection  
15 (a) or treated or disclosed in a manner that violates sec-  
16 tion 206.

17 **SEC. 204. LABOR ORGANIZATION PRACTICES.**

18 (a) USE OF GENETIC INFORMATION.—It shall be an  
19 unlawful employment practice for a labor organization—

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

1           (2) to limit, segregate, or classify the members  
2 of the organization, or fail or refuse to refer for em-  
3 ployment any member, in any way that would de-  
4 prive or tend to deprive any member of employment  
5 opportunities, or otherwise adversely affect the sta-  
6 tus of the member as an employee, because of ge-  
7 netic information with respect to the member (or in-  
8 formation about a request for or the receipt of ge-  
9 netic services by such member or family member of  
10 such member); or

11           (3) to cause or attempt to cause an employer to  
12 discriminate against a member in violation of this  
13 title.

14       (b) ACQUISITION OF GENETIC INFORMATION.—It  
15 shall be an unlawful employment practice for a labor orga-  
16 nization to request, require, or purchase genetic informa-  
17 tion with respect to a member or a family member of the  
18 member (or information about a request for the receipt  
19 of genetic services by such member or a family member  
20 of such member) except—

21           (1) where a labor organization inadvertently re-  
22 quests or requires family medical history of the  
23 member or family member of the member;

24           (2) where—

1           (A) health or genetic services are offered  
2           by the labor organization, including such serv-  
3           ices offered as part of a bona fide wellness pro-  
4           gram;

5           (B) the member provides prior, knowing,  
6           voluntary, and written authorization;

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

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

22          (3) where a labor organization requests or re-  
23          quires family medical history from the members to  
24          comply with the certification provisions of section  
25          103 of the Family and Medical Leave Act of 1993

1       ~~(29 U.S.C. 2613)~~ or such requirements under State  
2 family and medical leave laws;

3           ~~(4) where a labor organization purchases docu-~~  
4 ~~ments that are commercially and publicly available~~  
5 ~~(including newspapers, magazines, periodicals, and~~  
6 ~~books, but not including medical databases or court~~  
7 ~~records) that include family medical history; or~~

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

11                   ~~(A) the labor organization provides written~~  
12 ~~notice of the genetic monitoring to the member;~~

13                   ~~(B)(i) the member provides prior, knowing,~~  
14 ~~voluntary, and written authorization; or~~

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

17                   ~~(C) the member is informed of individual~~  
18 ~~monitoring results;~~

19                   ~~(D) the monitoring is in compliance with—~~

20                           ~~(i) any Federal genetic monitoring~~  
21 ~~regulations, including any such regulations~~  
22 ~~that may be promulgated by the Secretary~~  
23 ~~of Labor pursuant to the Occupational~~  
24 ~~Safety and Health Act of 1970 (29 U.S.C.~~  
25 ~~651 et seq.); the Federal Mine Safety and~~

1 Health Act of 1977 (30 U.S.C. 801 et  
 2 seq.); or the Atomic Energy Act of 1954  
 3 (42 U.S.C. 2011 et seq.); or

4 (ii) State genetic monitoring regula-  
 5 tions, in the case of a State that is imple-  
 6 menting genetic monitoring regulations  
 7 under the authority of the Occupational  
 8 Safety and Health Act of 1970 (29 U.S.C.  
 9 651 et seq.); and

10 (E) the labor organization, excluding any  
 11 licensed health care professional or board cer-  
 12 tified genetic counselor that is involved in the  
 13 genetic monitoring program, receives the results  
 14 of the monitoring only in aggregate terms that  
 15 do not disclose the identity of specific members;

16 (e) PRESERVATION OF PROTECTIONS.—In the case  
 17 of information to which any of paragraphs (1) through  
 18 (5) of subsection (b) applies, such information may not  
 19 be used in violation of paragraph (1) or (2) of subsection  
 20 (a) or treated or disclosed in a manner that violates sec-  
 21 tion 206.

22 **SEC. 205. TRAINING PROGRAMS.**

23 (a) USE OF GENETIC INFORMATION.—It shall be an  
 24 unlawful employment practice for any employer, labor or-  
 25 ganization, or joint labor-management committee control-

1 ling apprenticeship or other training or retraining, includ-  
2 ing on-the-job training programs—

3           (1) to discriminate against any individual be-  
4 cause of genetic information with respect to the indi-  
5 vidual (or information about a request for or the re-  
6 ceipt of genetic services by such individual or a fam-  
7 ily member of such individual) in admission to, or  
8 employment in, any program established to provide  
9 apprenticeship or other training or retraining;

10           (2) to limit, segregate, or classify the applicants  
11 for or participants in such apprenticeship or other  
12 training or retraining, or fail or refuse to refer for  
13 employment any individual, in any way that would  
14 deprive or tend to deprive any individual of employ-  
15 ment opportunities, or otherwise adversely affect the  
16 status of the individual as an employee, because of  
17 genetic information with respect to the individual (or  
18 information about a request for or receipt of genetic  
19 services by such individual or family member of such  
20 individual); or

21           (3) to cause or attempt to cause an employer to  
22 discriminate against an applicant for or a partici-  
23 pant in such apprenticeship or other training or re-  
24 training in violation of this title.

1       (b) ~~ACQUISITION OF GENETIC INFORMATION.—It~~  
2 shall be an unlawful employment practice for an employer,  
3 labor organization, or joint labor-management committee  
4 described in subsection (a) to request, require, or purchase  
5 genetic information with respect to an individual or a fam-  
6 ily member of the individual (or information about a re-  
7 quest for the receipt of genetic services by such individual  
8 or a family member of such individual) except—

9           (1) where the employer, labor organization, or  
10 joint labor-management committee inadvertently re-  
11 quests or requires family medical history of the indi-  
12 vidual or family member of the individual;

13           (2) where—

14               (A) health or genetic services are offered  
15 by the employer, labor organization, or joint  
16 labor-management committee, including such  
17 services offered as part of a bona fide wellness  
18 program;

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

21               (C) only the individual (or family member  
22 if the family member is receiving genetic serv-  
23 ices) and the licensed health care professional  
24 or board certified genetic counselor involved in  
25 providing such services receive individually iden-

1           tifiable information concerning the results of  
2           such services;

3           ~~(D)~~ any individually identifiable genetic in-  
4           formation provided under subparagraph ~~(C)~~ in  
5           connection with the services provided under  
6           subparagraph ~~(A)~~ is only available for purposes  
7           of such services and shall not be disclosed to  
8           the employer, labor organization, or joint labor-  
9           management committee except in aggregate  
10          terms that do not disclose the identity of spe-  
11          cific individuals;

12          ~~(3)~~ where the employer, labor organization, or  
13          joint labor-management committee requests or re-  
14          quires family medical history from the individual to  
15          comply with the certification provisions of section  
16          ~~103~~ of the Family and Medical Leave Act of 1993  
17          ~~(29 U.S.C. 2613)~~ or such requirements under State  
18          family and medical leave laws;

19          ~~(4)~~ where the employer, labor organization, or  
20          joint labor-management committee purchases docu-  
21          ments that are commercially and publicly available  
22          (including newspapers, magazines, periodicals, and  
23          books, but not including medical databases or court  
24          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  
3 toxic substances in the workplace, but only if—

4           (A) the employer, labor organization, or  
5 joint labor-management committee provides  
6 written notice of the genetic monitoring to the  
7 individual;

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

10          (ii) the genetic monitoring is required by  
11 Federal or State law;

12          (C) the individual is informed of individual  
13 monitoring results;

14          (D) the monitoring is in compliance with—

15           (i) any Federal genetic monitoring  
16 regulations, including any such regulations  
17 that may be promulgated by the Secretary  
18 of Labor pursuant to the Occupational  
19 Safety and Health Act of 1970 (29 U.S.C.  
20 651 et seq.); the Federal Mine Safety and  
21 Health Act of 1977 (30 U.S.C. 801 et  
22 seq.); or the Atomic Energy Act of 1954  
23 (42 U.S.C. 2011 et seq.); or

24           (ii) State genetic monitoring regula-  
25 tions, in the case of a State that is imple-

1           menting genetic monitoring regulations  
2           under the authority of the Occupational  
3           Safety and Health Act of 1970 (29 U.S.C.  
4           651 et seq.); and  
5           (E) the employer, labor organization, or  
6           joint labor-management committee, excluding  
7           any licensed health care professional or board  
8           certified genetic counselor that is involved in  
9           the genetic monitoring program, receives the re-  
10          sults of the monitoring only in aggregate terms  
11          that do not disclose the identity of specific indi-  
12          viduals;

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

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

20          (a) **TREATMENT OF INFORMATION AS PART OF CON-**  
21          **FIDENTIAL MEDICAL RECORD.**—If an employer, employ-  
22          ment agency, labor organization, or joint labor-manage-  
23          ment committee possesses genetic information about an  
24          employee or member (or information about a request for  
25          or receipt of genetic services by such employee or member

1 or family member of such employee or member), such in-  
2 formation shall be maintained on separate forms and in  
3 separate medical files and be treated as a confidential  
4 medical record of the employee or member.

5 (b) LIMITATION ON DISCLOSURE.—An employer, em-  
6 ployment agency, labor organization, or joint labor-man-  
7 agement committee shall not disclose genetic information  
8 concerning an employee or member (or information about  
9 a request for or receipt of genetic services by such em-  
10 ployee or member or family member of such employee or  
11 member) except—

12 (1) to the employee (or family member if the  
13 family member is receiving the genetic services) or  
14 member of a labor organization at the request of the  
15 employee or member of such organization;

16 (2) to an occupational or other health re-  
17 searcher if the research is conducted in compliance  
18 with the regulations and protections provided for  
19 under part 46 of title 45, Code of Federal Regula-  
20 tions;

21 (3) in response to an order of a court, except  
22 that—

23 (A) the employer, employment agency,  
24 labor organization, or joint labor-management

1 committee may disclose only the genetic infor-  
 2 mation expressly authorized by such order; and

3 ~~(B)~~ if the court order was secured without  
 4 the knowledge of the employee or member to  
 5 whom the information refers, the employer, em-  
 6 ployment agency, labor organization, or joint  
 7 labor-management committee shall provide the  
 8 employee or member with adequate notice to  
 9 challenge the court order;

10 ~~(4)~~ to government officials who are inves-  
 11 tigating compliance with this title if the information  
 12 is relevant to the investigation; or

13 ~~(5)~~ to the extent that such disclosure is made  
 14 in connection with the employee's compliance with  
 15 the certification provisions of section ~~103~~ of the  
 16 Family and Medical Leave Act of ~~1993~~ (29 U.S.C.  
 17 ~~2613~~) or such requirements under State family and  
 18 medical leave laws.

19 **SEC. 207. REMEDIES AND ENFORCEMENT.**

20 ~~(a)~~ EMPLOYEES COVERED BY TITLE VII OF THE  
 21 CIVIL RIGHTS ACT OF 1964.—

22 ~~(1)~~ IN GENERAL.—The powers, remedies, and  
 23 procedures provided in sections 705, 706, 707, 709,  
 24 710, and 711 of the Civil Rights Act of 1964 (42  
 25 U.S.C. ~~2000e-4~~ et seq.) to the Commission, the At-

1       torney General, or any person, alleging a violation of  
2       title VII of that Act (42 U.S.C. 2000e et seq.) shall  
3       be the powers, remedies, and procedures this title  
4       provides to the Commission, the Attorney General,  
5       or any person, respectively, alleging an unlawful em-  
6       ployment practice in violation of this title against an  
7       employee described in section 201(2)(A)(i), except as  
8       provided in paragraphs (2) and (3).

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

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

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

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

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

21 (3) DAMAGES.—The powers, remedies, and pro-  
22 cedures provided in section 1977A of the Revised  
23 Statutes (42 U.S.C. 1981a), including the limita-  
24 tions contained in subsection (b)(3) of such section  
25 1977A, shall be powers, remedies, and procedures

1 this title provides to the Commission, or any person,  
2 alleging such a practice (not an employment practice  
3 specifically excluded from coverage under section  
4 1977A(a)(1) of the Revised Statutes).

5 (e) EMPLOYEES COVERED BY CONGRESSIONAL AC-  
6 COUNTABILITY ACT OF 1995.—

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

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

1           (3) DAMAGES.—The powers, remedies, and pro-  
2           cedures provided in section 1977A of the Revised  
3           Statutes (42 U.S.C. 1981a), including the limita-  
4           tions contained in subsection (b)(3) of such section  
5           1977A, shall be powers, remedies, and procedures  
6           this title provides to that Board, or any person, al-  
7           leging such a practice (not an employment practice  
8           specifically excluded from coverage under section  
9           1977A(a)(1) of the Revised Statutes).

10           (4) OTHER APPLICABLE PROVISIONS.—With re-  
11           spect to a claim alleging a practice described in  
12           paragraph (1), title III of the Congressional Ac-  
13           countability Act of 1995 (2 U.S.C. 1381 et seq.)  
14           shall apply in the same manner as such title applies  
15           with respect to a claim alleging a violation of section  
16           201(a)(1) of such Act (2 U.S.C. 1311(a)(1)).

17           (d) EMPLOYEES COVERED BY CHAPTER 5 OF TITLE  
18           3, UNITED STATES CODE.—

19           (1) IN GENERAL.—The powers, remedies, and  
20           procedures provided in chapter 5 of title 3, United  
21           States Code, to the President, the Commission, the  
22           Merit Systems Protection Board, or any person, al-  
23           leging a violation of section 411(a)(1) of that title,  
24           shall be the powers, remedies, and procedures this  
25           title provides to the President, the Commission, such



1 Board, or any person, respectively, alleging an un-  
2 lawful employment practice in violation of this title  
3 against an employee described in section  
4 201(2)(A)(iv), except as provided in paragraphs (2)  
5 and (3).

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

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

22 (c) EMPLOYEES COVERED BY SECTION 717 OF THE  
23 CIVIL RIGHTS ACT OF 1964.—

24 (1) IN GENERAL.—The powers, remedies, and  
25 procedures provided in section 717 of the Civil

1 Rights Act of 1964 (42 U.S.C. 2000e-16) to the  
2 Commission, the Attorney General, the Librarian of  
3 Congress, or any person, alleging a violation of that  
4 section shall be the powers, remedies, and proce-  
5 dures this title provides to the Commission, the At-  
6 torney General, the Librarian of Congress, or any  
7 person, respectively, alleging an unlawful employ-  
8 ment practice in violation of this title against an em-  
9 ployee or applicant described in section  
10 201(2)(A)(v), except as provided in paragraphs (2)  
11 and (3).

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

19 (3) DAMAGES.—The powers, remedies, and pro-  
20 cedures provided in section 1977A of the Revised  
21 Statutes (42 U.S.C. 1981a), including the limita-  
22 tions contained in subsection (b)(3) of such section  
23 1977A, shall be powers, remedies, and procedures  
24 this title provides to the Commission, the Attorney  
25 General, the Librarian of Congress, or any person,

1 alleging such a practice (not an employment practice  
2 specifically excluded from coverage under section  
3 1977A(a)(1) of the Revised Statutes).

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

7 **SEC. 208. DISPARATE IMPACT.**

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

13 (b) COMMISSION.—On the date that is 6 years after  
14 the date of enactment of this Act, there shall be estab-  
15 lished a commission, to be known as the Genetic Non-  
16 discrimination Study Commission (referred to in this sec-  
17 tion as the “Commission”) to review the developing  
18 science of genetics and to make recommendations to Con-  
19 gress regarding whether to provide a disparate impact  
20 cause of action under this Act.

21 (c) MEMBERSHIP.—

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

24 (A) 1 member shall be appointed by the  
25 majority leader of the Senate;

1           ~~(B)~~ 1 member shall be appointed by the  
2 minority 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  
13 minority leader of the House of Representa-  
14 tives;

15          ~~(G)~~ 1 member shall be appointed by the  
16 Chairman of the Committee on Education and  
17 the Workforce of the House of Representatives;  
18 and

19          ~~(H)~~ 1 member shall be appointed by the  
20 ranking minority member of the Committee on  
21 Education and the Workforce of the House of  
22 Representatives.

23          ~~(2)~~ COMPENSATION AND EXPENSES.—The  
24 members of the Commission shall not receive com-  
25 pensation for the performance of services for the

1 Commission, but shall be allowed travel expenses, in-  
2 cluding per diem in lieu of subsistence, at rates au-  
3 thorized for employees of agencies under subchapter  
4 I of chapter 57 of title 5, United States Code, while  
5 away from their homes or regular places of business  
6 in the performance of services for the Commission.

7 (d) ADMINISTRATIVE PROVISIONS.—

8 (1) LOCATION.—The Commission shall be lo-  
9 cated in a facility maintained by the Equal Employ-  
10 ment Opportunity Commission.

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

16 (3) INFORMATION FROM FEDERAL AGENCIES.—  
17 The Commission may secure directly from any Fed-  
18 eral department or agency such information as the  
19 Commission considers necessary to carry out the  
20 provisions of this section. Upon request of the Com-  
21 mission, the head of such department or agency  
22 shall furnish such information to the Commission.

23 (4) HEARINGS.—The Commission may hold  
24 such hearings, sit and act at such times and places,  
25 take such testimony, and receive such evidence as

1 the Commission considers advisable to carry out the  
2 objectives of this section, except that, to the extent  
3 possible, the Commission shall use existing data and  
4 research.

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

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

15 (f) **AUTHORIZATION OF APPROPRIATIONS.**—There  
16 are authorized to be appropriated to the Equal Employ-  
17 ment Opportunity Commission such sums as may be nec-  
18 essary to carry out this section.

19 **SEC. 209. CONSTRUCTION.**

20 Nothing in this title shall be construed to—

21 (1) limit the rights or protections of an indi-  
22 vidual under the Americans with Disabilities Act of  
23 1990 (42 U.S.C. 12101 et seq.), including coverage  
24 afforded to individuals under section 102 of such

1 Act (~~42 U.S.C. 12112~~), or under the Rehabilitation  
2 Act of 1973 (~~29 U.S.C. 701 et seq.~~);

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

8 ~~(B) establish a violation under this title for an~~  
9 ~~employer, employment agency, labor organization, or~~  
10 ~~joint labor-management committee of a provision of~~  
11 ~~the amendments made by title I;~~

12 ~~(3) limit the rights or protections of an indi-~~  
13 ~~vidual under any other Federal or State statute that~~  
14 ~~provides equal or greater protection to an individual~~  
15 ~~than the rights or protections provided for under~~  
16 ~~this title;~~

17 ~~(4) apply to the Armed Forces Repository of~~  
18 ~~Specimen Samples for the Identification of Remains;~~

19 ~~(5) limit or expand the protections, rights, or~~  
20 ~~obligations of employees or employers under applica-~~  
21 ~~ble workers' compensation laws;~~

22 ~~(6) limit the authority of a Federal department~~  
23 ~~or agency to conduct or sponsor occupational or~~  
24 ~~other health research that is conducted in compli-~~  
25 ~~ance with the regulations contained in part 46 of~~

1 title 45, Code of Federal Regulations (or any cor-  
 2 responding or similar regulation or rule); and

3 ~~(7) limit the statutory or regulatory authority~~  
 4 ~~of the Occupational Safety and Health Administra-~~  
 5 ~~tion or the Mine Safety and Health Administration~~  
 6 ~~to promulgate or enforce workplace safety and~~  
 7 ~~health laws and regulations.~~

8 **SEC. 210. MEDICAL INFORMATION THAT IS NOT GENETIC**  
 9 **INFORMATION.**

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

18 **SEC. 211. REGULATIONS.**

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

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

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



1 **SEC. 213. EFFECTIVE DATE.**

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

4 **TITLE III—MISCELLANEOUS**  
5 **PROVISION**

6 **SEC. 301. SEVERABILITY.**

7 If any provision of this Act, an amendment made by  
8 this Act, or the application of such provision or amend-  
9 ment to any person or circumstance is held to be unconsti-  
10 tutional, the remainder of this Act, the amendments made  
11 by this Act, and the application of such provisions to any  
12 person or circumstance shall not be affected thereby.

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

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

16 (b) *TABLE OF CONTENTS.*—*The table of contents of this*  
17 *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.*

16 *(2) The early science of genetics became the basis*  
 17 *of State laws that provided for the sterilization of*  
 18 *persons having presumed genetic “defects” such as*  
 19 *mental retardation, mental disease, epilepsy, blind-*

1        *ness, and hearing loss, among other conditions. The*  
2        *first sterilization law was enacted in the State of In-*  
3        *diana in 1908. By 1981, a majority of States adopted*  
4        *sterilization laws to “correct” apparent genetic traits*  
5        *or tendencies. Many of these State laws have since*  
6        *been repealed, and many have been modified to in-*  
7        *clude essential constitutional requirements of due*  
8        *process and equal protection. However, the current ex-*  
9        *pllosion in the science of genetics, and the history of*  
10       *sterilization laws by the States based on early genetic*  
11       *science, compels Congressional action in this area.*

12                *(3) Although genes are facially neutral markers,*  
13        *many genetic conditions and disorders are associated*  
14        *with particular racial and ethnic groups and gender.*  
15        *Because some genetic traits are most prevalent in*  
16        *particular groups, members of a particular group*  
17        *may be stigmatized or discriminated against as a re-*  
18        *sult of that genetic information. This form of dis-*  
19        *crimination was evident in the 1970s, which saw the*  
20        *advent of programs to screen and identify carriers of*  
21        *sickle cell anemia, a disease which afflicts African-*  
22        *Americans. Once again, State legislatures began to*  
23        *enact discriminatory laws in the area, and in the*  
24        *early 1970s began mandating genetic screening of all*  
25        *African Americans for sickle cell anemia, leading to*

1       *discrimination and unnecessary fear. To alleviate*  
2       *some of this stigma, Congress in 1972 passed the Na-*  
3       *tional Sickle Cell Anemia Control Act, which with-*  
4       *holds Federal funding from States unless sickle cell*  
5       *testing is voluntary.*

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

16              (5) *Federal law addressing genetic discrimina-*  
17       *tion in health insurance and employment is incom-*  
18       *plete in both the scope and depth of its protections.*  
19       *Moreover, while many States have enacted some type*  
20       *of genetic non-discrimination law, these laws vary*  
21       *widely with respect to their approach, application,*  
22       *and level of protection. Congress has collected substan-*  
23       *tial evidence that the American public and the med-*  
24       *ical community find the existing patchwork of State*  
25       *and Federal laws to be confusing and inadequate to*

1       *protect them from discrimination. Therefore Federal*  
 2       *legislation establishing a national and uniform basic*  
 3       *standard is necessary to fully protect the public from*  
 4       *discrimination and allay their concerns about the po-*  
 5       *tential for discrimination, thereby allowing individ-*  
 6       *uals to take advantage 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 DISCRIMINATION ON*  
 14      *THE BASIS OF GENETIC INFORMATION OR GENETIC SERV-*  
 15      *ICES.—*

16                   (1) *NO ENROLLMENT RESTRICTION FOR GENETIC*  
 17      *SERVICES.—Section 702(a)(1)(F) of the Employee Re-*  
 18      *retirement Income Security Act of 1974 (29 U.S.C.*  
 19      *1182(a)(1)(F)) is amended by inserting before the pe-*  
 20      *riod the following: “(including information about a*  
 21      *request for or receipt of genetic services by an indi-*  
 22      *vidual or family member of such individual)”.*

23                   (2) *NO DISCRIMINATION IN GROUP PREMIUMS*  
 24      *BASED ON GENETIC INFORMATION.—Section 702(b) of*

1       *the Employee Retirement Income Security Act of*  
2       *1974 (29 U.S.C. 1182(b)) is amended—*

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

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

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

18              *(b) LIMITATIONS ON GENETIC TESTING.—Section 702*  
19              *of the Employee Retirement Income Security Act of 1974*  
20              *(29 U.S.C. 1182) is amended by adding at the end the fol-*  
21              *lowing:*

22              “(c) *GENETIC TESTING.—*

23                      “(1) *LIMITATION ON REQUESTING OR REQUIRING*  
24                      *GENETIC TESTING.—A group health plan, or a health*  
25                      *insurance issuer offering health insurance coverage in*

1 connection with a group health plan, shall not request  
2 or require an individual or a family member of such  
3 individual to undergo a genetic test.

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

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

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

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

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

1       (c) *REMEDIES AND ENFORCEMENT.*—Section 502 of  
 2 *the Employee Retirement Income Security Act of 1974* (29  
 3 *U.S.C. 1132)* is amended by adding at the end the following:

4       “(n) *ENFORCEMENT OF GENETIC NONDISCRIMINATION*  
 5 *REQUIREMENTS.*—

6           “(1) *INJUNCTIVE RELIEF FOR IRREPARABLE*  
 7 *HARM.*—With respect to any violation of subsection  
 8 *(a)(1)(F), (b)(3), or (c) of section 702, a participant*  
 9 *or beneficiary may seek relief under subsection*  
 10 *502(a)(1)(B) prior to the exhaustion of available ad-*  
 11 *ministrative remedies under section 503 if it is dem-*  
 12 *onstrated to the court, by a preponderance of the evi-*  
 13 *dence, that the exhaustion of such remedies would*  
 14 *cause irreparable harm to the health of the partici-*  
 15 *part or beneficiary. Any determinations that already*  
 16 *have been made under section 503 in such case, or*  
 17 *that are made in such case while an action under this*  
 18 *paragraph is pending, shall be given due consider-*  
 19 *ation by the court in any action under this subsection*  
 20 *in such case.*

21           “(2) *EQUITABLE RELIEF FOR GENETIC NON-*  
 22 *DISCRIMINATION.*—

23           “(A) *REINSTATEMENT OF BENEFITS WHERE*  
 24 *EQUITABLE RELIEF HAS BEEN AWARDED.*—*The*  
 25 *recovery of benefits by a participant or bene-*



1        *fiary under a civil action under this section*  
 2        *may include an administrative penalty under*  
 3        *subparagraph (B) and the retroactive reinstatement*  
 4        *of coverage under the plan involved to the*  
 5        *date on which the participant or beneficiary was*  
 6        *denied eligibility for coverage if—*

7                *“(i) the civil action was commenced*  
 8                *under subsection (a)(1)(B); and*

9                *“(ii) the denial of coverage on which*  
 10                *such civil action was based constitutes a*  
 11                *violation of subsection (a)(1)(F), (b)(3), or*  
 12                *(c) of section 702.*

13                *“(B) ADMINISTRATIVE PENALTY.—*

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

23                *“(ii) NONCOMPLIANCE PERIOD.—For*  
 24                *purposes of clause (i), the term ‘noncompli-*  
 25                *ance period’ means the period—*

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

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

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

10                  “(3) *SECRETARIAL ENFORCEMENT AUTHORITY.—*

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

16                   “(B) *AMOUNT.—*

17                   “(i) *IN GENERAL.—The amount of the*  
18                   *penalty imposed by subparagraph (A) shall*  
19                   *be \$100 for each day in the noncompliance*  
20                   *period with respect to each individual to*  
21                   *whom such failure relates.*

22                   “(ii) *NONCOMPLIANCE PERIOD.—For*  
23                   *purposes of this paragraph, the term ‘non-*  
24                   *compliance period’ means, with respect to*  
25                   *any failure, the period—*

1                   “(I) beginning on the date such  
2                   failure first occurs; and

3                   “(II) ending on the date such fail-  
4                   ure is corrected.

5                   “(C) *MINIMUM PENALTIES WHERE FAILURE*  
6                   *DISCOVERED.*—Notwithstanding clauses (i) and  
7                   (ii) of subparagraph (D):

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

11                  “(I) which are not corrected before  
12                  the date on which the plan receives a  
13                  notice from the Secretary of such viola-  
14                  tion; and

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

21                  “(ii) *HIGHER MINIMUM PENALTY*  
22                  *WHERE VIOLATIONS ARE MORE THAN DE*  
23                  *MINIMIS.*—To the extent violations for  
24                  which any person is liable under this para-  
25                  graph for any year are more than de mini-

1            *mis, clause (i) shall be applied by sub-*  
2            *stituting ‘\$15,000’ for ‘\$2,500’ with respect*  
3            *to such person.*

4            *“(D) LIMITATIONS.—*

5                    *“(i) PENALTY NOT TO APPLY WHERE*  
6                    *FAILURE NOT DISCOVERED EXERCISING*  
7                    *REASONABLE DILIGENCE.—No penalty shall*  
8                    *be imposed by subparagraph (A) on any*  
9                    *failure during any period for which it is es-*  
10                   *tablished to the satisfaction of the Secretary*  
11                   *that the person otherwise liable for such*  
12                   *penalty did not know, and exercising rea-*  
13                   *sonable diligence would not have known,*  
14                   *that such failure existed.*

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

19                            *“(I) such failure was due to rea-*  
20                            *sonable cause and not to willful ne-*  
21                            *glect; and*

22                            *“(II) such failure is corrected dur-*  
23                            *ing the 30-day period beginning on the*  
24                            *first date the person otherwise liable*  
25                            *for such penalty knew, or exercising*

1                   *reasonable diligence would have known,*  
 2                   *that such failure existed.*

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

9                                 “(I) *10 percent of the aggregate*  
 10                                *amount paid or incurred by the em-*  
 11                                *ployer (or predecessor employer) dur-*  
 12                                *ing the preceding taxable year for*  
 13                                *group health plans; or*

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

15                   “(E) *WAIVER BY SECRETARY.—In the case*  
 16                   *of a failure which is due to reasonable cause and*  
 17                   *not to willful neglect, the Secretary may waive*  
 18                   *part or all of the penalty imposed by subpara-*  
 19                   *graph (A) to the extent that the payment of such*  
 20                   *penalty would be excessive relative to the failure*  
 21                   *involved.”.*

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

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

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

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

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

10           “(6) *GENETIC INFORMATION.*—

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

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

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

17                           “(iii) *the occurrence of a disease or*  
18                           *disorder in family members of the indi-*  
19                           *vidual.*

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

23           “(7) *GENETIC TEST.*—

24                   “(A) *IN GENERAL.*—*The term ‘genetic test’*  
25                   *means an analysis of human DNA, RNA, chro-*

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

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

5                   “(i) an analysis of proteins or metabo-  
6                   lites that does not detect genotypes,  
7                   mutations, or chromosomal changes; or

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

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

17                   “(A) a genetic test;

18                   “(B) genetic counseling (such as obtaining,  
19                   interpreting, or assessing genetic information);  
20                   or

21                   “(C) genetic education.”.

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

23                   (1) *REGULATIONS.*—Not later than 1 year after  
24                   the date of enactment of this title, the Secretary of  
25                   Labor shall issue final regulations in an accessible

1       *format to carry out the amendments made by this sec-*  
 2       *tion.*

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

8       **SEC. 102. AMENDMENTS TO THE PUBLIC HEALTH SERVICE**  
 9               **ACT.**

10       (a) *AMENDMENTS RELATING TO THE GROUP MAR-*  
 11       *KET.*—

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

15               (A) *NO ENROLLMENT RESTRICTION FOR GE-*  
 16       *NETIC SERVICES.*—*Section 2702(a)(1)(F) of the*  
 17       *Public Health Service Act (42 U.S.C. 300gg-*  
 18       *1(a)(1)(F)) is amended by inserting before the*  
 19       *period the following: “(including information*  
 20       *about a request for or receipt of genetic services*  
 21       *by an individual or family member of such indi-*  
 22       *vidual)”.*

23               (B) *NO DISCRIMINATION IN GROUP PRE-*  
 24       *MIUMS BASED ON GENETIC INFORMATION.*—*Sec-*



1            *tion 2702(b) of the Public Health Service Act (42*  
2            *U.S.C. 300gg-1(b)) is amended—*

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

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

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

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

22                   *“(c) GENETIC TESTING.—*

23                   *“(1) LIMITATION ON REQUESTING OR REQUIRING*  
24                   *GENETIC TESTING.—A group health plan, or a health*  
25                   *insurance issuer offering health insurance coverage in*

1       *connection with a group health plan, shall not request*  
2       *or require an individual or a family member of such*  
3       *individual to undergo a genetic test.*

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

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

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

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

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

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

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

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

16          “(B) *AMOUNT.*—

17          “(i) *IN GENERAL.*—The amount of the  
 18          penalty imposed under this paragraph shall  
 19          be \$100 for each day in the noncompliance  
 20          period with respect to each individual to  
 21          whom such failure relates.

22          “(ii) *NONCOMPLIANCE PERIOD.*—For  
 23          purposes of this paragraph, the term ‘non-  
 24          compliance period’ means, with respect to  
 25          any failure, the period—

1                   “(I) beginning on the date such  
2                   failure first occurs; and

3                   “(II) ending on the date such fail-  
4                   ure is corrected.

5                   “(C) *MINIMUM PENALTIES WHERE FAILURE*  
6                   *DISCOVERED.*—Notwithstanding clauses (i) and  
7                   (ii) of subparagraph (D):

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

11                  “(I) which are not corrected before  
12                  the date on which the plan receives a  
13                  notice from the Secretary of such viola-  
14                  tion; and

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

21                  “(ii) *HIGHER MINIMUM PENALTY*  
22                  *WHERE VIOLATIONS ARE MORE THAN DE*  
23                  *MINIMIS.*—To the extent violations for  
24                  which any person is liable under this para-  
25                  graph for any year are more than de mini-

1            *mis, clause (i) shall be applied by sub-*  
2            *stituting ‘\$15,000’ for ‘\$2,500’ with respect*  
3            *to such person.*

4            *“(D) LIMITATIONS.—*

5                    *“(i) PENALTY NOT TO APPLY WHERE*  
6                    *FAILURE NOT DISCOVERED EXERCISING*  
7                    *REASONABLE DILIGENCE.—No penalty shall*  
8                    *be imposed by subparagraph (A) on any*  
9                    *failure during any period for which it is es-*  
10                   *tablished to the satisfaction of the Secretary*  
11                   *that the person otherwise liable for such*  
12                   *penalty did not know, and exercising rea-*  
13                   *sonable diligence would not have known,*  
14                   *that such failure existed.*

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

19                            *“(I) such failure was due to rea-*  
20                            *sonable cause and not to willful ne-*  
21                            *glect; and*

22                            *“(II) such failure is corrected dur-*  
23                            *ing the 30-day period beginning on the*  
24                            *first date the person otherwise liable*  
25                            *for such penalty knew, or exercising*

1                   *reasonable diligence would have known,*  
2                   *that such failure existed.*

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

9                   “(I) *10 percent of the aggregate*  
10                   *amount paid or incurred by the em-*  
11                   *ployer (or predecessor employer) dur-*  
12                   *ing the preceding taxable year for*  
13                   *group health plans; or*

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

15                   “(E) *WAIVER BY SECRETARY.—In the case*  
16                   *of a failure which is due to reasonable cause and*  
17                   *not to willful neglect, the Secretary may waive*  
18                   *part or all of the penalty imposed by subpara-*  
19                   *graph (A) to the extent that the payment of such*  
20                   *penalty would be excessive relative to the failure*  
21                   *involved.”.*

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

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

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

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

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

10           “(16) *GENETIC INFORMATION.*—

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

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

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

17                             “(iii) *the occurrence of a disease or*  
18                             *disorder in family members of the indi-*  
19                             *vidual.*

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

23           “(17) *GENETIC TEST.*—

24                     “(A) *IN GENERAL.*—*The term ‘genetic test’*  
25                     *means an analysis of human DNA, RNA, chro-*

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

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

5                   “(i) an analysis of proteins or metabo-  
6                   lites that does not detect genotypes,  
7                   mutations, or chromosomal changes; or

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

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

17                   “(A) a genetic test;

18                   “(B) genetic counseling (such as obtaining,  
19                   interpreting, or assessing genetic information);  
20                   or

21                   “(C) genetic education.”.

22           (b) *AMENDMENT RELATING TO THE INDIVIDUAL MAR-*  
23 *KET.*—

24                   (1) *IN GENERAL.*—The first subpart 3 of part B  
25                   of title XXVII of the Public Health Service Act (42



1 U.S.C. 300gg–51 et seq.) (relating to other require-  
2 ments) is amended—

3 (A) by redesignating such subpart as sub-  
4 part 2; and

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

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

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

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

25 “(c) *GENETIC TESTING.*—

1           “(1) *LIMITATION ON REQUESTING OR REQUIRING*  
2           *GENETIC TESTING.*—*A health insurance issuer offer-*  
3           *ing health insurance coverage in the individual mar-*  
4           *ket shall not request or require an individual or a*  
5           *family member of such individual to undergo a ge-*  
6           *netic test.*

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

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

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

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

1           (2) *REMEDIES AND ENFORCEMENT.*—Section  
 2           2761(b) of the Public Health Service Act (42 U.S.C.  
 3           300gg–61(b)) is amended to read as follows:

4           “(b) *SECRETARIAL ENFORCEMENT AUTHORITY.*—The  
 5           Secretary shall have the same authority in relation to en-  
 6           forcement of the provisions of this part with respect to  
 7           issuers of health insurance coverage in the individual mar-  
 8           ket in a State as the Secretary has under section 2722(b)(2),  
 9           and section 2722(b)(3) with respect to violations of genetic  
 10          nondiscrimination provisions, in relation to the enforce-  
 11          ment of the provisions of part A with respect to issuers of  
 12          health insurance coverage in the small group market in the  
 13          State.”.

14          (c) *ELIMINATION OF OPTION OF NON-FEDERAL GOV-*  
 15          *ERNMENTAL PLANS TO BE EXCEPTED FROM REQUIRE-*  
 16          *MENTS CONCERNING GENETIC INFORMATION.*—Section  
 17          2721(b)(2) of the Public Health Service Act (42 U.S.C.  
 18          300gg–21(b)(2)) is amended—

19                 (1) in subparagraph (A), by striking “If the  
 20                 plan sponsor” and inserting “Except as provided in  
 21                 subparagraph (D), if the plan sponsor”; and

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

23                         “(D) *ELECTION NOT APPLICABLE TO RE-*  
 24                         *QUIREMENTS CONCERNING GENETIC INFORMA-*  
 25                         *TION.*—The election described in subparagraph

1           (A) shall not be available with respect to the pro-  
2           visions of subsections (a)(1)(F) and (c) of section  
3           2702 and the provisions of section 2702(b) to the  
4           extent that such provisions apply to genetic in-  
5           formation (or information about a request for or  
6           the receipt of genetic services by an individual or  
7           a family member of such individual).”.

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

9           (1) *REGULATIONS.*—Not later than 1 year after  
10          the date of enactment of this title, the Secretary of  
11          Labor and the Secretary of Health and Human Serv-  
12          ices (as the case may be) shall issue final regulations  
13          in an accessible format to carry out the amendments  
14          made by this section.

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

17               (A) with respect to group health plans, and  
18               health insurance coverage offered in connection  
19               with group health plans, for plan years begin-  
20               ning after the date that is 18 months after the  
21               date of enactment of this title; and

22               (B) with respect to health insurance cov-  
23               erage offered, sold, issued, renewed, in effect, or  
24               operated in the individual market after the date

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

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

5           *(a) NONDISCRIMINATION.—*

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

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

19                   *“(ii) For purposes of clause (i), the terms*  
 20                   *‘family member’, ‘genetic services’, and ‘genetic*  
 21                   *information’ shall have the meanings given such*  
 22                   *terms in subsection (x).”.*

23           *(2) EFFECTIVE DATE.—The amendment made by*  
 24           *paragraph (1) shall apply with respect to a policy for*

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

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

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

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

8 *“(1) GENETIC TESTING.—*

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

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

16 *“(i) limit the authority of a health*  
 17 *care professional who is providing health*  
 18 *care services with respect to an individual*  
 19 *to request that such individual or a family*  
 20 *member of such individual undergo a ge-*  
 21 *netic test;*

22 *“(ii) limit the authority of a health*  
 23 *care professional who is employed by or af-*  
 24 *filiated with an issuer of a medicare supple-*  
 25 *mental policy and who is providing health*

1           *care services to an individual as part of a*  
 2           *bona fide wellness program to notify such*  
 3           *individual of the availability of a genetic*  
 4           *test or to provide information to such indi-*  
 5           *vidual regarding such genetic test; or*

6           *“(iii) authorize or permit a health care*  
 7           *professional to require that an individual*  
 8           *undergo a genetic test.*

9           “(2) *DEFINITIONS.—In this subsection:*

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

12           *“(i) the spouse of the individual;*

13           *“(ii) a dependent child of the indi-*  
 14           *vidual, including a child who is born to or*  
 15           *placed for adoption with the individual; or*

16           *“(iii) any other individuals related by*  
 17           *blood to the individual or to the spouse or*  
 18           *child described in clause (i) or (ii).*

19           “(B) *GENETIC INFORMATION.—*

20           *“(i) IN GENERAL.—Except as provided*  
 21           *in clause (ii), the term ‘genetic information’*  
 22           *means information about—*

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

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

1                   “(III) *the occurrence of a disease*  
2                   *or disorder in family members of the*  
3                   *individual.*

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

7                   “(C) *GENETIC TEST.—*

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

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

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

19                  “(II) *an analysis of proteins or*  
20                  *metabolites that is directly related to a*  
21                  *manifested disease, disorder, or patho-*  
22                  *logical condition that could reasonably*  
23                  *be detected by a health care profes-*  
24                  *sional with appropriate training and*



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

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

5                   “*(i) a genetic test;*

6                   “*(ii) genetic counseling (such as ob-*  
7                   *taining, interpreting, or assessing genetic*  
8                   *information); or*

9                   “*(iii) genetic education.*

10                  “(E) *ISSUER OF A MEDICARE SUPPLE-*  
11                  *MENTAL POLICY.*—*The term ‘issuer of a medicare*  
12                  *supplemental policy’ includes a third-party ad-*  
13                  *ministrator or other person acting for or on be-*  
14                  *half of such issuer.”.*

15                  “(2) *CONFORMING AMENDMENT.*—*Section 1882(o)*  
16                  *of the Social Security Act (42 U.S.C. 1395ss(o)) is*  
17                  *amended by adding at the end the following:*

18                  “*(4) The issuer of the medicare supplemental*  
19                  *policy complies with subsection (s)(2)(E) and sub-*  
20                  *section (x).”.*

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

1       (c) *TRANSITION PROVISIONS.*—

2           (1) *IN GENERAL.*—*If the Secretary of Health and*  
3       *Human Services identifies a State as requiring a*  
4       *change to its statutes or regulations to conform its*  
5       *regulatory program to the changes made by this sec-*  
6       *tion, the State regulatory program shall not be con-*  
7       *sidered to be out of compliance with the requirements*  
8       *of section 1882 of the Social Security Act due solely*  
9       *to failure to make such change until the date specified*  
10       *in paragraph (4).*

11           (2) *NAIC STANDARDS.*—*If, not later than June*  
12       *30, 2008, the National Association of Insurance Com-*  
13       *missioners (in this subsection referred to as the*  
14       *“NAIC”) modifies its NAIC Model Regulation relat-*  
15       *ing to section 1882 of the Social Security Act (re-*  
16       *ferred to in such section as the 1991 NAIC Model*  
17       *Regulation, as subsequently modified) to conform to*  
18       *the amendments made by this section, such revised*  
19       *regulation incorporating the modifications shall be*  
20       *considered to be the applicable NAIC model regulation*  
21       *(including the revised NAIC model regulation and the*  
22       *1991 NAIC Model Regulation) for the purposes of*  
23       *such section.*

24           (3) *SECRETARY STANDARDS.*—*If the NAIC does*  
25       *not make the modifications described in paragraph*

1       (2) *within the period specified in such paragraph, the*  
2       *Secretary of Health and Human Services shall, not*  
3       *later than October 1, 2008, make the modifications*  
4       *described in such paragraph and such revised regula-*  
5       *tion incorporating the modifications shall be consid-*  
6       *ered to be the appropriate regulation for the purposes*  
7       *of such section.*

8               (4) *DATE SPECIFIED.—*

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

12                       (i) *the date the State changes its stat-*  
13                       *utes or regulations to conform its regulatory*  
14                       *program to the changes made by this sec-*  
15                       *tion, or*

16                       (ii) *October 1, 2008.*

17                   (B) *ADDITIONAL LEGISLATIVE ACTION RE-*  
18                *QUIRED.—In the case of a State which the Sec-*  
19                retary *identifies as—*

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

24                       (ii) *having a legislature which is not*  
25                       *scheduled to meet in 2008 in a legislative*

1           *session in which such legislation may be*  
2           *considered, the date specified in this para-*  
3           *graph is the first day of the first calendar*  
4           *quarter beginning after the close of the first*  
5           *legislative session of the State legislature*  
6           *that begins on or after July 1, 2008. For*  
7           *purposes of the previous sentence, in the*  
8           *case of a State that has a 2-year legislative*  
9           *session, each year of such session shall be*  
10          *deemed to be a separate regular session of*  
11          *the State legislature.*

12   **SEC. 104. PRIVACY AND CONFIDENTIALITY.**

13          *(a) APPLICABILITY.—Except as provided in subsection*  
14          *(d), the provisions of this section shall apply to group health*  
15          *plans, health insurance issuers (including issuers in connec-*  
16          *tion with group health plans or individual health coverage),*  
17          *and issuers of medicare supplemental policies, without re-*  
18          *gard to—*

19                  *(1) section 732(a) of the Employee Retirement*  
20                  *Income Security Act of 1974 (29 U.S.C. 1191a(a));*

21                  *(2) section 2721(a) of the Public Health Service*  
22                  *Act (42 U.S.C. 300gg–21(a)); and*

23                  *(3) section 9831(a)(2) of the Internal Revenue*  
24                  *Code of 1986.*

1       (b) *COMPLIANCE WITH CERTAIN CONFIDENTIALITY*  
2 *STANDARDS WITH RESPECT TO GENETIC INFORMATION.*—

3           (1) *IN GENERAL.*—*The regulations promulgated*  
4 *by the Secretary of Health and Human Services*  
5 *under part C of title XI of the Social Security Act*  
6 *(42 U.S.C. 1320d et seq.) and section 264 of the*  
7 *Health Insurance Portability and Accountability Act*  
8 *of 1996 (42 U.S.C. 1320d–2 note) shall apply to the*  
9 *use or disclosure of genetic information.*

10          (2) *PROHIBITION ON UNDERWRITING AND PRE-*  
11 *MIUM RATING.*—*Notwithstanding paragraph (1), a*  
12 *group health plan, a health insurance issuer, or issuer*  
13 *of a medicare supplemental policy shall not use or*  
14 *disclose genetic information (including information*  
15 *about a request for or a receipt of genetic services by*  
16 *an individual or family member of such individual)*  
17 *for purposes of underwriting, determinations of eligi-*  
18 *bility to enroll, premium rating, or the creation, re-*  
19 *newal or replacement of a plan, contract or coverage*  
20 *for health insurance or health benefits.*

21       (c) *PROHIBITION ON COLLECTION OF GENETIC INFOR-*  
22 *MATION.*—

23           (1) *IN GENERAL.*—*A group health plan, health*  
24 *insurance issuer, or issuer of a medicare supple-*  
25 *mental policy shall not request, require, or purchase*

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

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

10 *A group health plan, health insurance issuer, or*  
11 *issuer of a medicare supplemental policy shall not re-*  
12 *quest, require, or purchase genetic information (in-*  
13 *cluding information about a request for or a receipt*  
14 *of genetic services by an individual or family member*  
15 *of such individual) concerning a participant, bene-*  
16 *ficiary, or enrollee prior to the enrollment, and in*  
17 *connection with such enrollment, of such individual*  
18 *under the plan, coverage, or policy.*

19 (3) *INCIDENTAL COLLECTION.—Where a group*  
20 *health plan, health insurance issuer, or issuer of a*  
21 *medicare supplemental policy obtains genetic infor-*  
22 *mation incidental to the requesting, requiring, or*  
23 *purchasing of other information concerning a partici-*  
24 *part, beneficiary, or enrollee, such request, require-*

1 *ment, or purchase shall not be considered a violation*  
2 *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 STANDARDS.—*

11 *The provisions of subsections (b) and (c) shall not apply—*

12 *(1) to group health plans, health insurance*  
13 *issuers, or issuers of medicare supplemental policies*  
14 *that are not otherwise covered under the regulations*  
15 *promulgated by the Secretary of Health and Human*  
16 *Services under part C of title XI of the Social Secu-*  
17 *rity Act (42 U.S.C. 1320d et seq.) and section 264 of*  
18 *the Health Insurance Portability and Accountability*  
19 *Act of 1996 (42 U.S.C. 1320d–2 note); and*

20 *(2) to genetic information that is not considered*  
21 *to be individually-identifiable health information*  
22 *under the regulations promulgated by the Secretary of*  
23 *Health and Human Services under part C of title XI*  
24 *of the Social Security Act (42 U.S.C. 1320d et seq.)*  
25 *and section 264 of the Health Insurance Portability*

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

3       *(e) ENFORCEMENT.—A group health plan, health in-*  
4       *surance issuer, or issuer of a medicare supplemental policy*  
5       *that violates a provision of this section shall be subject to*  
6       *the penalties described in sections 1176 and 1177 of the So-*  
7       *cial Security Act (42 U.S.C. 1320d–5 and 1320d–6) in the*  
8       *same manner and to the same extent that such penalties*  
9       *apply to violations of part C of title XI of such Act.*

10       *(f) PREEMPTION.—*

11               *(1) IN GENERAL.—A provision or requirement*  
12       *under this section or a regulation promulgated under*  
13       *this section shall supersede any contrary provision of*  
14       *State law unless such provision of State law imposes*  
15       *requirements, standards, or implementation specifica-*  
16       *tions that are more stringent than the requirements,*  
17       *standards, or implementation specifications imposed*  
18       *under this section or such regulations. No penalty,*  
19       *remedy, or cause of action to enforce such a State law*  
20       *that is more stringent shall be preempted by this sec-*  
21       *tion.*

22               *(2) RULE OF CONSTRUCTION.—Nothing in para-*  
23       *graph (1) shall be construed to establish a penalty,*  
24       *remedy, or cause of action under State law if such*



1        *penalty, remedy, or cause of action is not otherwise*  
2        *available under such State law.*

3        *(g) COORDINATION WITH PRIVACY REGULATIONS.—*

4        *The Secretary shall implement and administer this section*  
5        *in a manner that is consistent with the implementation and*  
6        *administration by the Secretary of the regulations promul-*  
7        *gated by the Secretary of Health and Human Services*  
8        *under part C of title XI of the Social Security Act (42*  
9        *U.S.C. 1320d et seq.) and section 264 of the Health Insur-*  
10       *ance Portability and Accountability Act of 1996 (42 U.S.C.*  
11       *1320d–2 note).*

12       *(h) DEFINITIONS.—In this section:*

13                *(1) GENETIC INFORMATION; GENETIC SERV-*  
14        *ICES.—The terms “family member”, “genetic infor-*  
15        *mation”, “genetic services”, and “genetic test” have*  
16        *the meanings given such terms in section 2791 of the*  
17        *Public Health Service Act (42 U.S.C. 300gg–91), as*  
18        *amended by this Act.*

19                *(2) GROUP HEALTH PLAN; HEALTH INSURANCE*  
20        *ISSUER.—The terms “group health plan” and “health*  
21        *insurance issuer” include only those plans and issuers*  
22        *that are covered under the regulations described in*  
23        *subsection (d)(1).*

24                *(3) ISSUER OF A MEDICARE SUPPLEMENTAL POL-*  
25        *ICY.—The term “issuer of a medicare supplemental*

1        *policy” means an issuer described in section 1882 of*  
2        *the Social Security Act (42 U.S.C. 1395ss).*

3                (4) *SECRETARY.—The term “Secretary” means*  
4        *the Secretary of Health and Human Services.*

5        **SEC. 105. ASSURING COORDINATION.**

6                (a) *IN GENERAL.—Except as provided in subsection*  
7        *(b), the Secretary of the Treasury, the Secretary of Health*  
8        *and Human Services, and the Secretary of Labor shall en-*  
9        *sure, through the execution of an interagency memorandum*  
10        *of understanding among such Secretaries, that—*

11                (1) *regulations, rulings, and interpretations*  
12        *issued by such Secretaries relating to the same matter*  
13        *over which two or more such Secretaries have respon-*  
14        *sibility under this title (and the amendments made by*  
15        *this title) are administered so as to have the same ef-*  
16        *fect at all times; and*

17                (2) *coordination of policies relating to enforcing*  
18        *the same requirements through such Secretaries in*  
19        *order to have a coordinated enforcement strategy that*  
20        *avoids duplication of enforcement efforts and assigns*  
21        *priorities in enforcement.*

22                (b) *AUTHORITY OF THE SECRETARY.—The Secretary*  
23        *of Health and Human Services has the sole authority to*  
24        *promulgate regulations to implement section 104.*

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

2 (a) *REGULATIONS.*—Not later than 1 year after the  
3 date of enactment of this title, the Secretary of Labor, the  
4 Secretary of Health and Human Services, and the Sec-  
5 retary of the Treasury shall issue final regulations in an  
6 accessible format to carry out this title.

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

11 **TITLE II—PROHIBITING EMPLOY-**  
12 **MENT DISCRIMINATION ON**  
13 **THE BASIS OF GENETIC IN-**  
14 **FORMATION**

15 **SEC. 201. DEFINITIONS.**

16 *In this title:*

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

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

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

25 (i) an employee (including an appli-  
26 cant), as defined in section 701(f) of the

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

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

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

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

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

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

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

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

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

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

6           or

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

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

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

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

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

20               (B) *a dependent child of the individual, in-*  
21               *cluding a child who is born to or placed for*  
22               *adoption with the individual; and*

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

1           (4) *GENETIC INFORMATION.*—

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

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

6                           (ii) *the genetic tests of family members*  
7                           *of the individual; or*

8                           (iii) *the occurrence of a disease or dis-*  
9                           *order in family members of the individual.*

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

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

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

25                   (A) *a genetic test;*

1           (B) *genetic counseling (such as obtaining,*  
2           *interpreting or assessing genetic information); or*

3           (C) *genetic education.*

4           (7) *GENETIC TEST.—*

5           (A) *IN GENERAL.—The term “genetic test”*  
6           *means the analysis of human DNA, RNA, chro-*  
7           *mosomes, proteins, or metabolites, that detects*  
8           *genotypes, mutations, or chromosomal changes.*

9           (B) *EXCEPTION.—The term “genetic test”*  
10          *does not mean an analysis of proteins or metabo-*  
11          *lites that does not detect genotypes, mutations, or*  
12          *chromosomal changes.*

13 **SEC. 202. EMPLOYER PRACTICES.**

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

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

24               (2) *to limit, segregate, or classify the employees*  
25               *of the employer in any way that would deprive or*

1        *tend to deprive any employee of employment opportu-*  
2        *nities or otherwise adversely affect the status of the*  
3        *employee as an employee, because of genetic informa-*  
4        *tion with respect to the employee (or information*  
5        *about a request for or the receipt of genetic services*  
6        *by such employee or family member of such em-*  
7        *ployee).*

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

15                *(1) where an employer inadvertently requests or*  
16        *requires family medical history of the employee or*  
17        *family member of the employee;*

18                *(2) where—*

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

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

24                        *(C) only the employee (or family member if*  
25        *the family member is receiving genetic services)*



1           *and the licensed health care professional or board*  
2           *certified genetic counselor involved in providing*  
3           *such services receive individually identifiable in-*  
4           *formation concerning the results of such services;*  
5           *and*

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

13                    *(3) where an employer requests or requires fam-*  
14          *ily medical history from the employee to comply with*  
15          *the certification provisions of section 103 of the Fam-*  
16          *ily and Medical Leave Act of 1993 (29 U.S.C. 2613)*  
17          *or such requirements under State family and medical*  
18          *leave laws;*

19                    *(4) where an employer purchases documents that*  
20          *are commercially and publicly available (including*  
21          *newspapers, magazines, periodicals, and books, but*  
22          *not including medical databases or court records) that*  
23          *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 employer provides written notice of*  
5 *the genetic monitoring to the employee;*

6           (B)(i) *the employee provides prior, know-*  
7 *ing, voluntary, and written authorization; or*

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

10          (C) *the employee 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 employer, excluding any licensed*  
4           *health care professional or board certified genetic*  
5           *counselor that is involved in the genetic moni-*  
6           *toring program, receives the results of the moni-*  
7           *toring only in aggregate terms that do not dis-*  
8           *close the identity of specific employees;*

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. 203. EMPLOYMENT AGENCY PRACTICES.**

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

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

23                  *(2) to limit, segregate, or classify individuals or*  
24                  *fail or refuse to refer for employment any individual*  
25                  *in any way that would deprive or tend to deprive any*

1        *individual of employment opportunities, or otherwise*  
2        *adversely affect the status of the individual as an em-*  
3        *ployee, because of genetic information with respect to*  
4        *the individual (or information about a request for or*  
5        *the receipt of genetic services by such individual or*  
6        *family member of such individual); or*

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

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

17                *(1) where an employment agency inadvertently*  
18        *requests or requires family medical history of the in-*  
19        *dividual or family member of the individual;*

20                *(2) where—*

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

24                        *(B) the individual provides prior, knowing,*  
25        *voluntary, and written authorization;*

1           (C) only the individual (or family member  
2           if the family member is receiving genetic serv-  
3           ices) and the licensed health care professional or  
4           board certified genetic counselor involved in pro-  
5           viding such services receive individually identifi-  
6           able information concerning the results of such  
7           services; 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 em-  
13          ployment agency except in aggregate terms that  
14          do not disclose the identity of specific individ-  
15          uals;

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

22          (4) where an employment agency purchases doc-  
23          uments that are commercially and publicly available  
24          (including newspapers, magazines, periodicals, and

1 *books, but not including medical databases or court*  
2 *records) that include family medical history; or*

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

6 *(A) the employment agency provides written*  
7 *notice of the genetic monitoring to the indi-*  
8 *vidual;*

9 *(B)(i) the individual provides prior, know-*  
10 *ing, voluntary, and written authorization; or*

11 *(ii) the genetic monitoring is required by*  
12 *Federal or State law;*

13 *(C) the individual is informed of individual*  
14 *monitoring results;*

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

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

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

7                   (E) *the employment agency, excluding any*  
 8                   *licensed health care professional or board cer-*  
 9                   *tified genetic counselor that is involved in the ge-*  
 10                   *netic monitoring program, receives the results of*  
 11                   *the monitoring only in aggregate terms that do*  
 12                   *not disclose the identity of specific individuals;*

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

18       **SEC. 204. LABOR ORGANIZATION PRACTICES.**

19               (a) *USE OF GENETIC INFORMATION.—It shall be an*  
 20               *unlawful employment practice for a labor organization—*

21                   (1) *to exclude or to expel from the membership*  
 22                   *of the organization, or otherwise to discriminate*  
 23                   *against, any member because of genetic information*  
 24                   *with respect to the member (or information about a*

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

3           (2) *to limit, segregate, or classify the members of*  
4       *the organization, or fail or refuse to refer for employ-*  
5       *ment any member, in any way that would deprive or*  
6       *tend to deprive any member of employment opportu-*  
7       *nities, or otherwise adversely affect the status of the*  
8       *member as an employee, because of genetic informa-*  
9       *tion with respect to the member (or information about*  
10       *a request for or the receipt of genetic services by such*  
11       *member or family member of such member); or*

12           (3) *to cause or attempt to cause an employer to*  
13       *discriminate against a member in violation of this*  
14       *title.*

15       (b) *ACQUISITION OF GENETIC INFORMATION.—It shall*  
16       *be an unlawful employment practice for a labor organiza-*  
17       *tion to request, require, or purchase genetic information*  
18       *with respect to a member or a family member of the member*  
19       *(or information about a request for the receipt of genetic*  
20       *services by such member or a family member of such mem-*  
21       *ber) except—*

22           (1) *where a labor organization inadvertently re-*  
23       *quests or requires family medical history of the mem-*  
24       *ber or family member of the member;*

25           (2) *where—*



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

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

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

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

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

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

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

9                   (A) the labor organization provides written  
10                  notice of the genetic monitoring to the member;

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

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

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

17                  (D) the monitoring is in compliance with—

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

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

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

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

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

20    **SEC. 205. TRAINING PROGRAMS.**

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

1           (1) *to discriminate against any individual be-*  
2 *cause of genetic information with respect to the indi-*  
3 *vidual (or information about a request for or the re-*  
4 *ceipt of genetic services by such individual or a fam-*  
5 *ily member of such individual) in admission to, or*  
6 *employment in, any program established to provide*  
7 *apprenticeship or other training or retraining;*

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

19           (3) *to cause or attempt to cause an employer to*  
20 *discriminate against an applicant for or a partici-*  
21 *pant in such apprenticeship or other training or re-*  
22 *training in violation of this title.*

23           (b) *ACQUISITION OF GENETIC INFORMATION.—It shall*  
24 *be an unlawful employment practice for an employer, labor*  
25 *organization, or joint labor-management committee de-*

1 *scribed in subsection (a) to request, require, or purchase ge-*  
2 *netic information with respect to an individual or a family*  
3 *member of the individual (or information about a request*  
4 *for the receipt of genetic services by such individual or a*  
5 *family member of such individual) except—*

6           (1) *where the employer, labor organization, or*  
7 *joint labor-management committee inadvertently re-*  
8 *quests or requires family medical history of the indi-*  
9 *vidual or family member of the individual;*

10           (2) *where—*

11               (A) *health or genetic services are offered by*  
12 *the employer, labor organization, or joint labor-*  
13 *management committee, including such services*  
14 *offered as part of a bona fide wellness program;*

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

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

24               (D) *any individually identifiable genetic*  
25 *information provided under subparagraph (C) in*

1           *connection with the services provided under sub-*  
2           *paragraph (A) is only available for purposes of*  
3           *such services and shall not be disclosed to the em-*  
4           *ployer, labor organization, or joint labor-man-*  
5           *agement committee except in aggregate terms*  
6           *that do not disclose the identity of specific indi-*  
7           *viduals;*

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

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

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

24                  (A) *the employer, labor organization, or*  
25                  *joint labor-management committee provides*

1           *written notice of the genetic monitoring to the*  
2           *individual;*

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

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

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

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

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

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

1           (E) the employer, labor organization, or  
2           joint labor-management committee, excluding  
3           any licensed health care professional or board  
4           certified genetic counselor that is involved in the  
5           genetic monitoring program, receives the results  
6           of the monitoring only in aggregate terms that  
7           do not disclose the identity of specific individ-  
8           uals;

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. 206. CONFIDENTIALITY OF GENETIC INFORMATION.**

15          (a) *TREATMENT OF INFORMATION AS PART OF CON-*  
16          *FIDENTIAL MEDICAL RECORD.*—If an employer, employ-  
17          ment agency, labor organization, or joint labor-manage-  
18          ment committee possesses genetic information about an em-  
19          ployee or member (or information about a request for or  
20          receipt of genetic services by such employee or member or  
21          family member of such employee or member), such informa-  
22          tion shall be maintained on separate forms and in separate  
23          medical files and be treated as a confidential medical record  
24          of the employee or member.



1       (b) *LIMITATION ON DISCLOSURE.*—An employer, em-  
2   ployment agency, labor organization, or joint labor-man-  
3   agement committee shall not disclose genetic information  
4   concerning an employee or member (or information about  
5   a request for or receipt of genetic services by such employee  
6   or member or family member of such employee or member)  
7   except—

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

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

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

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

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

1           *labor-management committee shall provide the*  
 2           *employee or member with adequate notice to*  
 3           *challenge the court order;*

4           (4) *to government officials who are investigating*  
 5           *compliance with this title if the information is rel-*  
 6           *evant to the investigation; or*

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

13 **SEC. 207. REMEDIES AND ENFORCEMENT.**

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

16           (1) *IN GENERAL.—The powers, remedies, and*  
 17           *procedures provided in sections 705, 706, 707, 709,*  
 18           *710, and 711 of the Civil Rights Act of 1964 (42*  
 19           *U.S.C. 2000e–4 et seq.) to the Commission, the Attor-*  
 20           *ney General, or any person, alleging a violation of*  
 21           *title VII of that Act (42 U.S.C. 2000e et seq.) shall*  
 22           *be the powers, remedies, and procedures this title pro-*  
 23           *vides to the Commission, the Attorney General, or*  
 24           *any person, respectively, alleging an unlawful em-*  
 25           *ployment practice in violation of this title against an*

1        *employee described in section 201(2)(A)(i), except as*  
2        *provided in paragraphs (2) and (3).*

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

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

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

20            (1) *IN GENERAL.—The powers, remedies, and*  
21       *procedures provided in sections 302 and 304 of the*  
22       *Government Employee Rights Act of 1991 (42 U.S.C.*  
23       *2000e–16b, 2000e–16c) to the Commission, or any*  
24       *person, alleging a violation of section 302(a)(1) of*  
25       *that Act (42 U.S.C. 2000e–16b(a)(1)) shall be the*

1        *powers, remedies, and procedures this title provides to*  
2        *the Commission, or any person, respectively, alleging*  
3        *an unlawful employment practice in violation of this*  
4        *title against an employee described in section*  
5        *201(2)(A)(ii), except as provided in paragraphs (2)*  
6        *and (3).*

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

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

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

24           (1) *IN GENERAL.—The powers, remedies, and*  
25       *procedures provided in the Congressional Account-*

1 *ability Act of 1995 (2 U.S.C. 1301 et seq.) to the*  
2 *Board (as defined in section 101 of that Act (2 U.S.C.*  
3 *1301)), or any person, alleging a violation of section*  
4 *201(a)(1) of that Act (42 U.S.C. 1311(a)(1)) shall be*  
5 *the powers, remedies, and procedures this title pro-*  
6 *vides to that Board, or any person, alleging an un-*  
7 *lawful employment practice in violation of this title*  
8 *against an employee described in section*  
9 *201(2)(A)(iii), except as provided in paragraphs (2)*  
10 *and (3).*

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

17 (3) *DAMAGES.—The powers, remedies, and pro-*  
18 *cedures provided in section 1977A of the Revised*  
19 *Statutes (42 U.S.C. 1981a), including the limitations*  
20 *contained in subsection (b)(3) of such section 1977A,*  
21 *shall be powers, remedies, and procedures this title*  
22 *provides to that Board, or any person, alleging such*  
23 *a practice (not an employment practice specifically*  
24 *excluded from coverage under section 1977A(a)(1) of*  
25 *the Revised Statutes).*

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

8           (d) *EMPLOYEES COVERED BY CHAPTER 5 OF TITLE*  
9 *3, UNITED STATES CODE.*—

10           (1) *IN GENERAL.*—The powers, remedies, and  
11           procedures provided in chapter 5 of title 3, United  
12           States Code, to the President, the Commission, the  
13           Merit Systems Protection Board, or any person, alleg-  
14           ing a violation of section 411(a)(1) of that title, shall  
15           be the powers, remedies, and procedures this title pro-  
16           vides to the President, the Commission, such Board,  
17           or any person, respectively, alleging an unlawful em-  
18           ployment practice in violation of this title against an  
19           employee described in section 201(2)(A)(iv), except as  
20           provided in paragraphs (2) and (3).

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

1 provides to the President, the Commission, such  
2 Board, or any person, alleging such a practice.

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

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

15 (1) *IN GENERAL.*—The powers, remedies, and  
16 procedures provided in section 717 of the Civil Rights  
17 Act of 1964 (42 U.S.C. 2000e–16) to the Commission,  
18 the Attorney General, the Librarian of Congress, or  
19 any person, alleging a violation of that section shall  
20 be the powers, remedies, and procedures this title pro-  
21 vides to the Commission, the Attorney General, the  
22 Librarian of Congress, or any person, respectively, al-  
23 leging an unlawful employment practice in violation  
24 of this title against an employee or applicant de-

1       scribed in section 201(2)(A)(v), except as provided in  
2       paragraphs (2) and (3).

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

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

20              (f) *DEFINITION.*—In this section, the term “Commis-  
21       sion” means the Equal Employment Opportunity Commis-  
22       sion.

23       **SEC. 208. DISPARATE IMPACT.**

24              (a) *GENERAL RULE.*—Notwithstanding any other pro-  
25       vision of this Act, “disparate impact”, as that term is used



1 *in section 703(k) of the Civil Rights Act of 1964 (42 U.S.C.*  
2 *2000e-2(k)), on the basis of genetic information does not*  
3 *establish a cause of action under this Act.*

4       **(b) COMMISSION.**—*On the date that is 6 years after*  
5 *the date of enactment of this Act, there shall be established*  
6 *a commission, to be known as the Genetic Nondiscrimina-*  
7 *tion Study Commission (referred to in this section as the*  
8 *“Commission”) to review the developing science of genetics*  
9 *and to make recommendations to Congress regarding wheth-*  
10 *er to provide a disparate impact cause of action under this*  
11 *Act.*

12       **(c) MEMBERSHIP.**—

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

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

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

19                       **(C)** *1 member shall be appointed by the*  
20 *Chairman of the Committee on Health, Edu-*  
21 *cation, Labor, and Pensions of the Senate;*

22                       **(D)** *1 member shall be appointed by the*  
23 *ranking minority member of the Committee on*  
24 *Health, Education, Labor, and Pensions of the*  
25 *Senate;*

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

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

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

9           (H) 1 member shall be appointed by the  
10          ranking minority member of the Committee on  
11          Education and the Workforce of the House of  
12          Representatives.

13          (2) *COMPENSATION AND EXPENSES.*—The mem-  
14          bers of the Commission shall not receive compensation  
15          for the performance of services for the Commission,  
16          but shall be allowed travel expenses, including per  
17          diem in lieu of subsistence, at rates authorized for  
18          employees of agencies under subchapter I of chapter  
19          57 of title 5, United States Code, while away from  
20          their homes or regular places of business in the per-  
21          formance of services for the Commission.

22          (d) *ADMINISTRATIVE PROVISIONS.*—

23               (1) *LOCATION.*—The Commission shall be located  
24               in a facility maintained by the Equal Employment  
25               Opportunity Commission.

1           (2) *DETAIL OF GOVERNMENT EMPLOYEES.*—Any  
2           *Federal Government employee may be detailed to the*  
3           *Commission without reimbursement, and such detail*  
4           *shall be without interruption or loss of civil service*  
5           *status or privilege.*

6           (3) *INFORMATION FROM FEDERAL AGENCIES.*—  
7           *The Commission may secure directly from any Fed-*  
8           *eral department or agency such information as the*  
9           *Commission considers necessary to carry out the pro-*  
10          *visions of this section. Upon request of the Commis-*  
11          *sion, the head of such department or agency shall fur-*  
12          *nish such information to the Commission.*

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

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

23          (e) *REPORT.*—*Not later than 1 year after all of the*  
24          *members are appointed to the Commission under subsection*  
25          *(c)(1), the Commission shall submit to Congress a report*

1 *that summarizes the findings of the Commission and makes*  
2 *such recommendations for legislation as are consistent with*  
3 *this Act.*

4 (f) *AUTHORIZATION OF APPROPRIATIONS.—There are*  
5 *authorized to be appropriated to the Equal Employment*  
6 *Opportunity Commission such sums as may be necessary*  
7 *to carry out this section.*

8 **SEC. 209. CONSTRUCTION.**

9 *Nothing in this title shall be construed to—*

10 (1) *limit the rights or protections of an indi-*  
11 *vidual under the Americans with Disabilities Act of*  
12 *1990 (42 U.S.C. 12101 et seq.), including coverage af-*  
13 *forded to individuals under section 102 of such Act*  
14 *(42 U.S.C. 12112), or under the Rehabilitation Act of*  
15 *1973 (29 U.S.C. 701 et seq.);*

16 (2)(A) *limit the rights or protections of an indi-*  
17 *vidual to bring an action under this title against an*  
18 *employer, employment agency, labor organization, or*  
19 *joint labor-management committee for a violation of*  
20 *this title; or*

21 (B) *establish a violation under this title for an*  
22 *employer, employment agency, labor organization, or*  
23 *joint labor-management committee of a provision of*  
24 *the amendments made by title I;*

1           (3) *limit the rights or protections of an indi-*  
2 *vidual under any other Federal or State statute that*  
3 *provides equal or greater protection to an individual*  
4 *than the rights or protections provided for under this*  
5 *title;*

6           (4) *apply to the Armed Forces Repository of*  
7 *Specimen Samples for the Identification of Remains;*

8           (5) *limit or expand the protections, rights, or ob-*  
9 *ligations of employees or employers under applicable*  
10 *workers' compensation laws;*

11           (6) *limit the authority of a Federal department*  
12 *or agency to conduct or sponsor occupational or other*  
13 *health research that is conducted in compliance with*  
14 *the regulations contained in part 46 of title 45, Code*  
15 *of Federal Regulations (or any corresponding or simi-*  
16 *lar regulation or rule); and*

17           (7) *limit the statutory or regulatory authority of*  
18 *the Occupational Safety and Health Administration*  
19 *or the Mine Safety and Health Administration to*  
20 *promulgate or enforce workplace safety and health*  
21 *laws and regulations.*

22 **SEC. 210. MEDICAL INFORMATION THAT IS NOT GENETIC**  
23 **INFORMATION.**

24           *An employer, employment agency, labor organization,*  
25 *or joint labor-management committee shall not be consid-*

1 *ered to be in violation of this title based on the use, acquisi-*  
 2 *tion, or disclosure of medical information that is not genetic*  
 3 *information about a manifested disease, disorder, or patho-*  
 4 *logical condition of an employee or member, including a*  
 5 *manifested disease, disorder, or pathological condition that*  
 6 *has or may have a genetic basis.*

7 **SEC. 211. REGULATIONS.**

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

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

12 *There are authorized to be appropriated such sums as*  
 13 *may be necessary to carry out this title (except for section*  
 14 *208).*

15 **SEC. 213. EFFECTIVE DATE.**

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

18 **TITLE III—MISCELLANEOUS**  
 19 **PROVISION**

20 **SEC. 301. SEVERABILITY.**

21 *If any provision of this Act, an amendment made by*  
 22 *this Act, or the application of such provision or amendment*  
 23 *to any person or circumstance is held to be unconstitu-*  
 24 *tional, the remainder of this Act, the amendments made by*

1 *this Act, and the application of such provisions to any per-*  
2 *son or circumstance shall not be affected thereby.*

**Calendar No. 97**

110<sup>TH</sup> CONGRESS  
1<sup>ST</sup> Session

**S. 358**

---

---

**A BILL**

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

---

---

MARCH 29, 2007

Reported with an amendment