

107TH CONGRESS
1ST SESSION

S. 19

To protect the civil rights of all Americans, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 22, 2001

Mr. DASCHLE (for himself, Mr. KENNEDY, Mr. LIEBERMAN, Mr. LEAHY, Mr. BIDEN, Mr. FEINGOLD, Mr. SCHUMER, Mr. DURBIN, Mr. AKAKA, Mrs. BOXER, Mr. BREAUX, Mrs. CLINTON, Mr. CORZINE, Mr. DAYTON, Mr. EDWARDS, Mr. HARKIN, Mr. LEVIN, Ms. MIKULSKI, Mr. ROCKEFELLER, Mr. WYDEN, and Mr. KERRY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To protect the civil rights of all Americans, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Protecting Civil Rights for All Americans Act”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—LOCAL LAW ENFORCEMENT ENHANCEMENT ACT OF
2001

- Sec. 101. Short title.
- Sec. 102. Findings.
- Sec. 103. Definition of hate crime.
- Sec. 104. Support for criminal investigations and prosecutions by State and local law enforcement officials.
- Sec. 105. Grant program.
- Sec. 106. Authorization for additional personnel to assist State and local law enforcement.
- Sec. 107. Prohibition of certain hate crime acts.
- Sec. 108. Duties of Federal sentencing commission.
- Sec. 109. Statistics.
- Sec. 110. Severability.

TITLE II—TRAFFIC STOPS STATISTICS STUDY

- Sec. 201. Short title.
- Sec. 202. Attorney General to conduct study.
- Sec. 203. Grant program.
- Sec. 204. Limitation on use of data.
- Sec. 205. Definitions.
- Sec. 206. Authorization of appropriations.

TITLE III—SUPPORTING INDIGENT REPRESENTATION

- Sec. 301. Findings.
- Sec. 302. Authorization of appropriations.

TITLE IV—GENETIC NONDISCRIMINATION IN HEALTH INSURANCE AND EMPLOYMENT

Subtitle A—Prohibition of Health Insurance Discrimination on the Basis of Predictive Genetic Information

- Sec. 401. Amendments to Employee Retirement Income Security Act of 1974.
- Sec. 402. Amendments to the Public Health Service Act.
- Sec. 403. Amendments to Internal Revenue Code of 1986.
- Sec. 404. Amendments to title XVIII of the Social Security Act relating to medigap.

Subtitle B—Prohibition of Employment Discrimination on the Basis of Predictive Genetic Information

- Sec. 411. Definitions.
- Sec. 412. Employer practices.
- Sec. 413. Employment agency practices.
- Sec. 414. Labor organization practices.
- Sec. 415. Training programs.
- Sec. 416. Maintenance and disclosure of predictive genetic information.
- Sec. 417. Civil action.
- Sec. 418. Construction.
- Sec. 419. Authorization of appropriations.
- Sec. 420. Effective date.

TITLE V—EMPLOYMENT NONDISCRIMINATION

- Sec. 501. Short title.
- Sec. 502. Purposes.
- Sec. 503. Definitions.

Sec. 504. Discrimination prohibited.
 Sec. 505. Retaliation and coercion prohibited.
 Sec. 506. Benefits.
 Sec. 507. Collection of statistics prohibited.
 Sec. 508. Quotas and preferential treatment prohibited.
 Sec. 509. Religious exemption.
 Sec. 510. Nonapplication to members of the Armed Forces; veterans' preferences.
 Sec. 511. Construction.
 Sec. 512. Enforcement.
 Sec. 513. State and Federal immunity.
 Sec. 514. Attorneys' fees.
 Sec. 515. Posting notices.
 Sec. 516. Regulations.
 Sec. 517. Relationship to other laws.
 Sec. 518. Severability.
 Sec. 519. Effective date.

TITLE VI—PROMOTING CIVIL RIGHTS ENFORCEMENT

Sec. 601. Establishment of the National Task Force on Violence Against Health Care Providers.
 Sec. 602. Increase in funding for enforcing civil rights laws.

1 **TITLE I—LOCAL LAW ENFORCE-** 2 **MENT ENHANCEMENT ACT OF** 3 **2001**

4 **SEC. 101. SHORT TITLE.**

5 This title may be cited as the “Local Law Enforce-
 6 ment Enhancement Act of 2001”.

7 **SEC. 102. FINDINGS.**

8 Congress makes the following findings:

9 (1) The incidence of violence motivated by the
 10 actual or perceived race, color, religion, national ori-
 11 gin, gender, sexual orientation, or disability of the
 12 victim poses a serious national problem.

13 (2) Such violence disrupts the tranquility and
 14 safety of communities and is deeply divisive.

1 (3) State and local authorities are now and will
2 continue to be responsible for prosecuting the over-
3 whelming majority of violent crimes in the United
4 States, including violent crimes motivated by bias.
5 These authorities can carry out their responsibilities
6 more effectively with greater Federal assistance.

7 (4) Existing Federal law is inadequate to ad-
8 dress this problem.

9 (5) The prominent characteristic of a violent
10 crime motivated by bias is that it devastates not just
11 the actual victim and the victim's family and friends,
12 but frequently savages the community sharing the
13 traits that caused the victim to be selected.

14 (6) Such violence substantially affects interstate
15 commerce in many ways, including—

16 (A) by impeding the movement of members
17 of targeted groups and forcing such members to
18 move across State lines to escape the incidence
19 or risk of such violence; and

20 (B) by preventing members of targeted
21 groups from purchasing goods and services, ob-
22 taining or sustaining employment or partici-
23 pating in other commercial activity.

24 (7) Perpetrators cross State lines to commit
25 such violence.

1 (8) Channels, facilities, and instrumentalities of
2 interstate commerce are used to facilitate the com-
3 mission of such violence.

4 (9) Such violence is committed using articles
5 that have traveled in interstate commerce.

6 (10) For generations, the institutions of slavery
7 and involuntary servitude were defined by the race,
8 color, and ancestry of those held in bondage. Slavery
9 and involuntary servitude were enforced, both prior
10 to and after the adoption of the 13th amendment to
11 the Constitution of the United States, through wide-
12 spread public and private violence directed at per-
13 sons because of their race, color, or ancestry, or per-
14 ceived race, color, or ancestry. Accordingly, elimi-
15 nating racially motivated violence is an important
16 means of eliminating, to the extent possible, the
17 badges, incidents, and relics of slavery and involun-
18 tary servitude.

19 (11) Both at the time when the 13th, 14th, and
20 15th amendments to the Constitution of the United
21 States were adopted, and continuing to date, mem-
22 bers of certain religious and national origin groups
23 were and are perceived to be distinct “races”. Thus,
24 in order to eliminate, to the extent possible, the
25 badges, incidents, and relics of slavery, it is nec-

1 essary to prohibit assaults on the basis of real or
 2 perceived religions or national origins, at least to the
 3 extent such religions or national origins were re-
 4 garded as races at the time of the adoption of the
 5 13th, 14th, and 15th amendments to the Constitu-
 6 tion of the United States.

7 (12) Federal jurisdiction over certain violent
 8 crimes motivated by bias enables Federal, State, and
 9 local authorities to work together as partners in the
 10 investigation and prosecution of such crimes.

11 (13) The problem of crimes motivated by bias
 12 is sufficiently serious, widespread, and interstate in
 13 nature as to warrant Federal assistance to States
 14 and local jurisdictions.

15 **SEC. 103. DEFINITION OF HATE CRIME.**

16 In this title, the term “hate crime” has the same
 17 meaning as in section 280003(a) of the Violent Crime
 18 Control and Law Enforcement Act of 1994 (28 U.S.C.
 19 994 note).

20 **SEC. 104. SUPPORT FOR CRIMINAL INVESTIGATIONS AND**
 21 **PROSECUTIONS BY STATE AND LOCAL LAW**
 22 **ENFORCEMENT OFFICIALS.**

23 (a) ASSISTANCE OTHER THAN FINANCIAL ASSIST-
 24 ANCE.—

1 (1) IN GENERAL.—At the request of a law en-
2 forcement official of a State or Indian tribe, the At-
3 torney General may provide technical, forensic, pros-
4 ecutorial, or any other form of assistance in the
5 criminal investigation or prosecution of any crime
6 that—

7 (A) constitutes a crime of violence (as de-
8 fined in section 16 of title 18, United States
9 Code);

10 (B) constitutes a felony under the laws of
11 the State or Indian tribe; and

12 (C) is motivated by prejudice based on the
13 victim’s race, color, religion, national origin,
14 gender, sexual orientation, or disability or is a
15 violation of the hate crime laws of the State or
16 Indian tribe.

17 (2) PRIORITY.—In providing assistance under
18 paragraph (1), the Attorney General shall give pri-
19 ority to crimes committed by offenders who have
20 committed crimes in more than 1 State and to rural
21 jurisdictions that have difficulty covering the ex-
22 traordinary expenses relating to the investigation or
23 prosecution of the crime.

24 (b) GRANTS.—

1 (1) IN GENERAL.—The Attorney General may
2 award grants to assist State, local, and Indian law
3 enforcement officials with the extraordinary expenses
4 associated with the investigation and prosecution of
5 hate crimes. In implementing the grant program, the
6 Office of Justice Programs shall work closely with
7 the funded jurisdictions to ensure that the concerns
8 and needs of all affected parties, including commu-
9 nity groups and schools, colleges, and universities,
10 are addressed through the local infrastructure devel-
11 oped under the grants.

12 (2) APPLICATION.—

13 (A) IN GENERAL.—Each State desiring a
14 grant under this subsection shall submit an ap-
15 plication to the Attorney General at such time,
16 in such manner, and accompanied by or con-
17 taining such information as the Attorney Gen-
18 eral shall reasonably require.

19 (B) DATE FOR SUBMISSION.—Applications
20 submitted pursuant to subparagraph (A) shall
21 be submitted during the 60-day period begin-
22 ning on a date that the Attorney General shall
23 prescribe.

1 (C) REQUIREMENTS.—A State or political
2 subdivision of a State or tribal official applying
3 for assistance under this subsection shall—

4 (i) describe the extraordinary pur-
5 poses for which the grant is needed;

6 (ii) certify that the State, political
7 subdivision, or Indian tribe lacks the re-
8 sources necessary to investigate or pros-
9 ecute the hate crime;

10 (iii) demonstrate that, in developing a
11 plan to implement the grant, the State, po-
12 litical subdivision, or tribal official has con-
13 sulted and coordinated with nonprofit, non-
14 governmental victim services programs
15 that have experience in providing services
16 to victims of hate crimes; and

17 (iv) certify that any Federal funds re-
18 ceived under this subsection will be used to
19 supplement, not supplant, non-Federal
20 funds that would otherwise be available for
21 activities funded under this subsection.

22 (3) DEADLINE.—An application for a grant
23 under this subsection shall be approved or dis-
24 approved by the Attorney General not later than 30

1 business days after the date on which the Attorney
2 General receives the application.

3 (4) GRANT AMOUNT.—A grant under this sub-
4 section shall not exceed \$100,000 for any single ju-
5 risdiction within a 1 year period.

6 (5) REPORT.—Not later than December 31,
7 2002, the Attorney General shall submit to Congress
8 a report describing the applications submitted for
9 grants under this subsection, the award of such
10 grants, and the purposes for which the grant
11 amounts were expended.

12 (6) AUTHORIZATION OF APPROPRIATIONS.—
13 There is authorized to be appropriated to carry out
14 this subsection \$5,000,000 for each of fiscal years
15 2002 and 2003.

16 **SEC. 105. GRANT PROGRAM.**

17 (a) AUTHORITY TO MAKE GRANTS.—The Office of
18 Justice Programs of the Department of Justice shall
19 award grants, in accordance with such regulations as the
20 Attorney General may prescribe, to State and local pro-
21 grams designed to combat hate crimes committed by juve-
22 niles, including programs to train local law enforcement
23 officers in identifying, investigating, prosecuting, and pre-
24 venting hate crimes.

1 (b) AUTHORIZATION OF APPROPRIATIONS.—There
 2 are authorized to be appropriated such sums as may be
 3 necessary to carry out this section.

4 **SEC. 106. AUTHORIZATION FOR ADDITIONAL PERSONNEL**
 5 **TO ASSIST STATE AND LOCAL LAW ENFORCE-**
 6 **MENT.**

7 There are authorized to be appropriated to the De-
 8 partment of the Treasury and the Department of Justice,
 9 including the Community Relations Service, for fiscal
 10 years 2002, 2003, and 2004 such sums as are necessary
 11 to increase the number of personnel to prevent and re-
 12 spond to alleged violations of section 249 of title 18,
 13 United States Code (as added by this title).

14 **SEC. 107. PROHIBITION OF CERTAIN HATE CRIME ACTS.**

15 (a) IN GENERAL.—Chapter 13 of title 18, United
 16 States Code, is amended by adding at the end the fol-
 17 lowing:

18 **“§ 249. Hate crime acts**

19 **“(a) IN GENERAL.—**

20 **“(1) OFFENSES INVOLVING ACTUAL OR PER-**
 21 **CEIVED RACE, COLOR, RELIGION, OR NATIONAL ORI-**
 22 **GIN.—Whoever, whether or not acting under color of**
 23 **law, willfully causes bodily injury to any person or,**
 24 **through the use of fire, a firearm, or an explosive or**
 25 **incendiary device, attempts to cause bodily injury to**

any person, because of the actual or perceived race,
color, religion, or national origin of any person—

“(A) shall be imprisoned not more than 10
years, fined in accordance with this title, or
both; and

“(B) shall be imprisoned for any term of
years or for life, fined in accordance with this
title, or both, if—

“(i) death results from the offense; or

“(ii) the offense includes kidnaping or
an attempt to kidnap, aggravated sexual
abuse or an attempt to commit aggravated
sexual abuse, or an attempt to kill.

“(2) OFFENSES INVOLVING ACTUAL OR PER-
CEIVED RELIGION, NATIONAL ORIGIN, GENDER, SEX-
UAL ORIENTATION, OR DISABILITY.—

“(A) IN GENERAL.—Whoever, whether or
not acting under color of law, in any cir-
cumstance described in subparagraph (B), will-
fully causes bodily injury to any person or,
through the use of fire, a firearm, or an explo-
sive or incendiary device, attempts to cause
bodily injury to any person, because of the ac-
tual or perceived religion, national origin, gen-

der, sexual orientation, or disability of any person—

“(i) shall be imprisoned not more than 10 years, fined in accordance with this title, or both; and

“(ii) shall be imprisoned for any term of years or for life, fined in accordance with this title, or both, if—

“(I) death results from the offense; or

“(II) the offense includes kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill.

“(B) CIRCUMSTANCES DESCRIBED.—For purposes of subparagraph (A), the circumstances described in this subparagraph are that—

“(i) the conduct described in subparagraph (A) occurs during the course of, or as the result of, the travel of the defendant or the victim—

“(I) across a State line or national border; or

1 “(II) using a channel, facility, or
2 instrumentality of interstate or for-
3 eign commerce;

4 “(ii) the defendant uses a channel, fa-
5 cility, or instrumentality of interstate or
6 foreign commerce in connection with the
7 conduct described in subparagraph (A);

8 “(iii) in connection with the conduct
9 described in subparagraph (A): the defend-
10 ant employs a firearm, explosive or incen-
11 diary device, or other weapon that has
12 traveled in interstate or foreign commerce;
13 or

14 “(iv) the conduct described in sub-
15 paragraph (A)—

16 “(I) interferes with commercial
17 or other economic activity in which
18 the victim is engaged at the time of
19 the conduct; or

20 “(II) otherwise affects interstate
21 or foreign commerce.

22 “(b) CERTIFICATION REQUIREMENT.—No prosecu-
23 tion of any offense described in this subsection may be
24 undertaken by the United States, except under the certifi-
25 cation in writing of the Attorney General, the Deputy At-

1 torney General, the Associate Attorney General, or any
 2 Assistant Attorney General specially designated by the At-
 3 torney General that—

4 “(1) he or she has reasonable cause to believe
 5 that the actual or perceived race, color, religion, na-
 6 tional origin, gender, sexual orientation, or disability
 7 of any person was a motivating factor underlying the
 8 alleged conduct of the defendant; and

9 “(2) he or his designee or she or her designee
 10 has consulted with State or local law enforcement of-
 11 ficials regarding the prosecution and determined
 12 that—

13 “(A) the State does not have jurisdiction
 14 or does not intend to exercise jurisdiction;

15 “(B) the State has requested that the Fed-
 16 eral Government assume jurisdiction;

17 “(C) the State does not object to the Fed-
 18 eral Government assuming jurisdiction; or

19 “(D) the verdict or sentence obtained pur-
 20 suant to State charges left demonstratively
 21 unvindicated the Federal interest in eradicating
 22 bias-motivated violence.

23 “(c) DEFINITIONS.—In this section—

1 “(1) the term ‘explosive or incendiary device’
 2 has the meaning given the term in section 232 of
 3 this title; and

4 “(2) the term ‘firearm’ has the meaning given
 5 the term in section 921(a) of this title.”.

6 (b) TECHNICAL AND CONFORMING AMENDMENT.—
 7 The analysis for chapter 13 of title 18, United States
 8 Code, is amended by adding at the end the following:

“249. Hate crime acts.”.

9 **SEC. 108. DUTIES OF FEDERAL SENTENCING COMMISSION.**

10 (a) AMENDMENT OF FEDERAL SENTENCING GUIDE-
 11 LINES.—Pursuant to its authority under section 994 of
 12 title 28, United States Code, the United States Sentencing
 13 Commission shall study the issue of adult recruitment of
 14 juveniles to commit hate crimes and shall, if appropriate,
 15 amend the Federal sentencing guidelines to provide sen-
 16 tencing enhancements (in addition to the sentencing en-
 17 hancement provided for the use of a minor during the
 18 commission of an offense) for adult defendants who recruit
 19 juveniles to assist in the commission of hate crimes.

20 (b) CONSISTENCY WITH OTHER GUIDELINES.—In
 21 carrying out this section, the United States Sentencing
 22 Commission shall—

23 (1) ensure that there is reasonable consistency
 24 with other Federal sentencing guidelines; and

1 (2) avoid duplicative punishments for substan-
2 tially the same offense.

3 **SEC. 109. STATISTICS.**

4 Subsection (b)(1) of the first section of the Hate
5 Crimes Statistics Act (28 U.S.C. 534 note) is amended
6 by inserting “gender,” after “race,”.

7 **SEC. 110. SEVERABILITY.**

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

15 **TITLE II—TRAFFIC STOPS**
16 **STATISTICS STUDY**

17 **SEC. 201. SHORT TITLE.**

18 This title may be cited as the “Traffic Stops Statis-
19 tics Study Act of 2001”.

20 **SEC. 202. ATTORNEY GENERAL TO CONDUCT STUDY.**

21 (a) STUDY.—

22 (1) IN GENERAL.—The Attorney General shall
23 conduct a nationwide study of stops for traffic viola-
24 tions by law enforcement officers.

1 (2) INITIAL ANALYSIS.—The Attorney General
2 shall perform an initial analysis of existing data, in-
3 cluding complaints alleging and other information
4 concerning traffic stops motivated by race and other
5 bias.

6 (3) DATA COLLECTION.—After completion of
7 the initial analysis under paragraph (2), the Attor-
8 ney General shall then gather the following data on
9 traffic stops from a nationwide sample of jurisdic-
10 tions, including jurisdictions identified in the initial
11 analysis:

12 (A) The traffic infraction alleged to have
13 been committed that led to the stop.

14 (B) Identifying characteristics of the driver
15 stopped, including the race, gender, ethnicity,
16 and approximate age of the driver.

17 (C) Whether immigration status was ques-
18 tioned, immigration documents were requested,
19 or an inquiry was made to the Immigration and
20 Naturalization Service with regard to any per-
21 son in the vehicle.

22 (D) The number of individuals in the
23 stopped vehicle.

1 (E) Whether a search was instituted as a
2 result of the stop and whether consent was re-
3 quested for the search.

4 (F) Any alleged criminal behavior by the
5 driver that justified the search.

6 (G) Any items seized, including contraband
7 or money.

8 (H) Whether any warning or citation was
9 issued as a result of the stop.

10 (I) Whether an arrest was made as a re-
11 sult of either the stop or the search and the
12 justification for the arrest.

13 (J) The duration of the stop.

14 (b) REPORTING.—Not later than 120 days after the
15 date of enactment of this Act, the Attorney General shall
16 report the results of its initial analysis to Congress, and
17 make such report available to the public, and identify the
18 jurisdictions for which the study is to be conducted. Not
19 later than 2 years after the date of the enactment of this
20 Act, the Attorney General shall report the results of the
21 data collected under this title to Congress, a copy of which
22 shall also be published in the Federal Register.

23 **SEC. 203. GRANT PROGRAM.**

24 In order to complete the study described in section
25 202, the Attorney General may provide grants to law en-

1 enforcement agencies to collect and submit the data de-
2 scribed in section 202 to the appropriate agency as des-
3 ignated by the Attorney General.

4 **SEC. 204. LIMITATION ON USE OF DATA.**

5 Information released pursuant to section 202 shall
6 not reveal the identity of any individual who is stopped
7 or any law enforcement officer involved in a traffic stop.

8 **SEC. 205. DEFINITIONS.**

9 In this title:

10 (1) **LAW ENFORCEMENT AGENCY.**—The term
11 “law enforcement agency” means an agency of a
12 State or political subdivision of a State, authorized
13 by law or by a Federal, State, or local government
14 agency to engage in or supervise the prevention, de-
15 tection, or investigation of violations of criminal
16 laws, or a federally recognized Indian tribe.

17 (2) **INDIAN TRIBE.**—The term “Indian tribe”
18 means any Indian or Alaska Native tribe, band, na-
19 tion, pueblo, village, or community that the Sec-
20 retary of the Interior acknowledges to exist as an In-
21 dian tribe.

22 **SEC. 206. AUTHORIZATION OF APPROPRIATIONS.**

23 There are authorized to be appropriated such sums
24 as may be necessary to carry out this title.

1 **TITLE III—SUPPORTING**
2 **INDIGENT REPRESENTATION**

3 **SEC. 301. FINDINGS.**

4 Congress finds the following:

5 (1) There is a need to encourage equal access
6 for individuals to the system of justice in the United
7 States.

8 (2) There is a need to encourage the provision
9 of high quality legal assistance for persons who
10 would otherwise be unable to afford legal counsel.

11 (3) Legal Services Corporation programs serve
12 clients with cases concerning housing, family law, in-
13 come maintenance, consumer issues, and employ-
14 ment.

15 (4) For years the Federal resources available to
16 the Legal Services Corporation have eroded. Nearly
17 half of all people who applied for assistance from
18 local Legal Services Corporation programs have been
19 turned away in recent years.

20 (5) Congress must adequately fund Legal Serv-
21 ices Corporation programs to preserve the strength
22 of the programs.

23 **SEC. 302. AUTHORIZATION OF APPROPRIATIONS.**

24 Section 1010(a) of the Legal Services Corporation
25 Act (42 U.S.C. 2996i(a)) is amended to read as follows:

1 “(a) There are authorized to be appropriated for the
2 purpose of carrying out the activities of the Corporation,
3 \$400,000,000 for fiscal year 2002.”.

4 **TITLE IV—GENETIC NON-**
5 **DISCRIMINATION IN HEALTH**
6 **INSURANCE AND EMPLOY-**
7 **MENT**

8 **Subtitle A—Prohibition of Health**
9 **Insurance Discrimination on the**
10 **Basis of Predictive Genetic In-**
11 **formation**

12 **SEC. 401. AMENDMENTS TO EMPLOYEE RETIREMENT IN-**
13 **COME SECURITY ACT OF 1974.**

14 (a) PROHIBITION OF HEALTH INSURANCE DISCRIMI-
15 NATION ON THE BASIS OF GENETIC SERVICES OR PRE-
16 DICTIVE GENETIC INFORMATION.—

17 (1) NO ENROLLMENT RESTRICTION FOR GE-
18 NETIC SERVICES.—Section 702(a)(1)(F) of the Em-
19 ployee Retirement Income Security Act of 1974 (29
20 U.S.C. 1182(a)(1)(F)) is amended by inserting be-
21 fore the period “(or information about a request for
22 or the receipt of genetic services by such individual
23 or family member of such individual)”.

24 (2) NO DISCRIMINATION IN GROUP RATE BASED
25 ON PREDICTIVE GENETIC INFORMATION.—

1 (A) IN GENERAL.—Subpart B of Part 7 of
 2 subtitle B of title I of the Employee Retirement
 3 Income Security Act of 1974 (29 U.S.C. 1185
 4 et seq.) is amended by adding at the end the
 5 following:

6 **“SEC. 714. PROHIBITING DISCRIMINATION AGAINST**
 7 **GROUPS ON THE BASIS OF PREDICTIVE GE-**
 8 **NETIC INFORMATION.**

9 “A group health plan, and a health insurance issuer
 10 offering group health insurance coverage in connection
 11 with a group health plan, shall not deny eligibility to a
 12 group or adjust premium or contribution rates for a group
 13 on the basis of predictive genetic information concerning
 14 an individual in the group (or information about a request
 15 for or the receipt of genetic services by such individual
 16 or family member of such individual).”.

17 (B) CONFORMING AMENDMENTS.—

18 (i) Section 702(b)(2)(A) of the Em-
 19 ployee Retirement Income Security Act of
 20 1974 (29 U.S.C. 1182(b)) is amended to
 21 read as follows:

22 “(A) to restrict the amount that an em-
 23 ployer may be charged for coverage under a
 24 group health plan, except as provided in section
 25 714; or”.

1 (ii) Section 732(a) of the Employee
 2 Retirement Income Security Act of 1974
 3 (29 U.S.C. 1191a(a)) is amended by strik-
 4 ing “section 711” and inserting “sub-
 5 sections (a)(1)(F), (b) (with respect to
 6 cases relating to genetic information or in-
 7 formation about a request or receipt of ge-
 8 netic services by an individual or family
 9 member of such individual), (c), (d), (e),
 10 (f), or (g) of section 702, section 711 and
 11 section 714”.

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

17 “(c) GENETIC TESTING.—

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

24 “(2) RULE OF CONSTRUCTION.—Nothing in
 25 this part shall be construed to limit the authority of

1 a health care professional, who is providing treat-
2 ment with respect to an individual and who is em-
3 ployed by a group health plan or a health insurance
4 issuer, to request that such individual or family
5 member of such individual undergo a genetic test.
6 Such a health care professional shall not require
7 that such individual or family member undergo a ge-
8 netic test.

9 “(d) COLLECTION OF PREDICTIVE GENETIC INFOR-
10 MATION.—Except as provided in subsections (f) and (g),
11 a group health plan, or a health insurance issuer offering
12 health insurance coverage in connection with a group
13 health plan, shall not request, require, collect, or purchase
14 predictive genetic information concerning an individual (or
15 information about a request for or the receipt of genetic
16 services by such individual or family member of such indi-
17 vidual).

18 “(e) DISCLOSURE OF PREDICTIVE GENETIC INFOR-
19 MATION.—A group health plan, or a health insurance
20 issuer offering health insurance coverage in connection
21 with a group health plan, shall not disclose predictive ge-
22 netic information about an individual (or information
23 about a request for or the receipt of genetic services by
24 such individual or family member of such individual) to—

1 “(1) any entity that is a member of the same
2 controlled group as such issuer or plan sponsor of
3 such group health plan;

4 “(2) any other group health plan or health in-
5 surance issuer or any insurance agent, third party
6 administrator, or other person subject to regulation
7 under State insurance laws;

8 “(3) the Medical Information Bureau or any
9 other person that collects, compiles, publishes, or
10 otherwise disseminates insurance information;

11 “(4) the individual’s employer or any plan spon-
12 sor; or

13 “(5) any other person the Secretary may speci-
14 fy in regulations.

15 “(f) INFORMATION FOR PAYMENT FOR GENETIC
16 SERVICES.—

17 “(1) IN GENERAL.—With respect to payment
18 for genetic services conducted concerning an indi-
19 vidual or the coordination of benefits, a group health
20 plan, or a health insurance issuer offering group
21 health insurance coverage in connection with a group
22 health plan, may request that the individual provide
23 the plan or issuer with evidence that such services
24 were performed.

1 “(2) RULE OF CONSTRUCTION.—Nothing in
2 paragraph (1) shall be construed to—

3 “(A) permit a group health plan or health
4 insurance issuer to request (or require) the re-
5 sults of the services referred to in such para-
6 graph; or

7 “(B) require that a group health plan or
8 health insurance issuer make payment for serv-
9 ices described in such paragraph where the in-
10 dividual involved has refused to provide evi-
11 dence of the performance of such services pur-
12 suant to a request by the plan or issuer in ac-
13 cordance with such paragraph.

14 “(g) INFORMATION FOR PAYMENT OF OTHER
15 CLAIMS.—With respect to the payment of claims for bene-
16 fits other than genetic services, a group health plan, or
17 a health insurance issuer offering group health insurance
18 coverage in connection with a group health plan, may re-
19 quest that an individual provide predictive genetic infor-
20 mation so long as such information—

21 “(1) is used solely for the payment of a claim;

22 “(2) is limited to information that is directly re-
23 lated to and necessary for the payment of such claim
24 and the claim would otherwise be denied but for the
25 predictive genetic information; and

1 “(3) is used only by an individual (or individ-
 2 uals) within such plan or issuer who needs access to
 3 such information for purposes of payment of a
 4 claim.

5 “(h) RULES OF CONSTRUCTION.—

6 “(1) COLLECTION OR DISCLOSURE AUTHORIZED
 7 BY INDIVIDUAL.—The provisions of subsections (d)
 8 (regarding collection) and (e) shall not apply to an
 9 individual if the individual (or legal representative of
 10 the individual) provides prior, knowing, voluntary,
 11 and written authorization for the collection or disclo-
 12 sure of predictive genetic information.

13 “(2) DISCLOSURE FOR HEALTH CARE TREAT-
 14 MENT.—Nothing in this section shall be construed to
 15 limit or restrict the disclosure of predictive genetic
 16 information from a health care provider to another
 17 health care provider for the purpose of providing
 18 health care treatment to the individual involved.

19 “(i) DEFINITIONS.—In this section:

20 “(1) CONTROLLED GROUP.—The term ‘con-
 21 trolled group’ means any group treated as a single
 22 employer under subsection (b), (c), (m), or (o) of
 23 section 414 of the Internal Revenue Code of 1986.

24 “(2) GROUP HEALTH PLAN, HEALTH INSUR-
 25 ANCE ISSUER.—The terms ‘group health plan’ and

1 ‘health insurance issuer’ include a third party ad-
 2 ministrator or other person acting for or on behalf
 3 of such plan or issuer.’’.

4 (c) ENFORCEMENT.—Section 502 (29 U.S.C. 1132)
 5 is amended by adding at the end the following:

6 “(n) VIOLATION OF GENETIC DISCRIMINATION OR
 7 GENETIC DISCLOSURE PROVISIONS.—In any action under
 8 this section against any administrator of a group health
 9 plan, or health insurance issuer offering group health in-
 10 surance coverage in connection with a group health plan
 11 (including any third party administrator or other person
 12 acting for or on behalf of such plan or issuer) alleging
 13 a violation of subsection (a)(1)(F), (b) (with respect to
 14 cases relating to genetic information or information about
 15 a request or receipt of genetic services by an individual
 16 or family member of such individual), (c), (d), (e), (f), or
 17 (g) of section 702, or section 714, the court may award
 18 any appropriate legal or equitable relief. Such relief may
 19 include a requirement for the payment of attorney’s fees
 20 and costs, including the costs of expert witnesses.

21 “(o) CIVIL PENALTY.—The monetary provisions of
 22 section 308(b)(2)(C) of Public Law 101–336 (42 U.S.C.
 23 12188(b)(2)(C)) shall apply for purposes of the Secretary
 24 enforcing the provisions referred to in subsection (n), ex-

cept that any such relief awarded shall be paid only into the general fund of the Treasury.”.

(d) PREEMPTION.—Section 731 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1191) is amended—

(1) in subsection (a)(1), by inserting “or (e)” after “subsection (b)”; and

(2) by adding at the end the following:

“(e) SPECIAL RULE IN CASE OF GENETIC INFORMATION.—With respect to group health insurance coverage offered by a health insurance issuer, the provisions of this part relating to genetic information (including information about a request for or the receipt of genetic services by an individual or a family member of such individual) shall not be construed to supersede any provision of State law which establishes, implements, or continues in effect a standard, requirement, or remedy that more completely—

“(1) protects the confidentiality of genetic information (including information about a request for or the receipt of genetic services by an individual or a family member of such individual) or the privacy of an individual or a family member of the individual with respect to genetic information (including information about a request for or the receipt of genetic

1 services by an individual or a family member of such
 2 individual) than does this part; or

3 “(2) prohibits discrimination on the basis of ge-
 4 netic information than does this part.”.

5 (e) DEFINITIONS.—Section 733(d) of the Employee
 6 Retirement Income Security Act of 1974 (29 U.S.C.
 7 1191b(d)) is amended by adding at the end the following:

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

10 “(A) the spouse of the individual;

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

14 “(C) any other individuals related by blood
 15 to the individual or to the spouse or child de-
 16 scribed in subparagraph (A) or (B).

17 “(6) GENETIC INFORMATION.—The term ‘ge-
 18 netic information’ means information about genes,
 19 gene products, or inherited characteristics that may
 20 derive from an individual or a family member of
 21 such individual (including information about a re-
 22 quest for or the receipt of genetic services by such
 23 individual or family member of such individual).

24 “(7) GENETIC SERVICES.—The term ‘genetic
 25 services’ means health services, including genetic

1 tests, provided to obtain, assess, or interpret genetic
 2 information for diagnostic and therapeutic purposes,
 3 and for genetic education and counseling.

4 “(8) GENETIC TEST.—The term ‘genetic test’
 5 means the analysis of human DNA, RNA, chro-
 6 mosomes, proteins, and certain metabolites in order
 7 to detect genotypes, mutations, or chromosomal
 8 changes.

9 “(9) PREDICTIVE GENETIC INFORMATION.—

10 “(A) IN GENERAL.—The term ‘predictive
 11 genetic information’ means—

12 “(i) information about an individual’s
 13 genetic tests;

14 “(ii) information about genetic tests
 15 of family members of the individual; or

16 “(iii) information about the occur-
 17 rence of a disease or disorder in family
 18 members.

19 “(B) LIMITATIONS.—The term ‘predictive
 20 genetic information’ shall not include—

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

23 “(ii) information about chemical,
 24 blood, or urine analyses of the individual,
 25 unless these analyses are genetic tests; or

1 “(iii) information about physical
2 exams of the individual, and other informa-
3 tion relevant to determining the current
4 health status of the individual.”.

5 (f) AMENDMENT CONCERNING SUPPLEMENTAL EX-
6 CEPTED BENEFITS.—Section 732(c)(3) of the Employee
7 Retirement Income Security Act of 1974 (29 U.S.C.
8 1191a(c)(3)) is amended by inserting “, other than the
9 requirements of subsections (a)(1)(F), (b) (in cases relat-
10 ing to genetic information or information about a request
11 for or the receipt of genetic services by an individual or
12 a family member of such individual), (c), (d), (e), (f) and
13 (g) of section 702 and section 714,” after “The require-
14 ments of this part”.

15 (g) EFFECTIVE DATE.—

16 (1) IN GENERAL.—Except as provided in this
17 section, this section and the amendments made by
18 this section shall apply with respect to group health
19 plans for plan years beginning after October 1,
20 2002.

21 (2) SPECIAL RULE FOR COLLECTIVE BAR-
22 GAINING AGREEMENTS.—In the case of a group
23 health plan maintained pursuant to one or more col-
24 lective bargaining agreements between employee rep-
25 resentatives and one or more employers ratified be-

1 fore the date of the enactment of this Act, this sec-
 2 tion and the amendments made by this section shall
 3 not apply to plan years beginning before the later
 4 of—

5 (A) the date on which the last of the col-
 6 lective bargaining agreements relating to the
 7 plan terminates (determined without regard to
 8 any extension thereof agreed to after the date
 9 of the enactment of this Act), or

10 (B) October 1, 2002.

11 For purposes of subparagraph (A), any plan amend-
 12 ment made pursuant to a collective bargaining
 13 agreement relating to the plan which amends the
 14 plan solely to conform to any requirement of the
 15 amendments made by this section shall not be treat-
 16 ed as a termination of such collective bargaining
 17 agreement.

18 **SEC. 402. AMENDMENTS TO THE PUBLIC HEALTH SERVICE**

19 **ACT.**

20 (a) AMENDMENTS RELATING TO THE GROUP MAR-
 21 KET.—

22 (1) PROHIBITION OF HEALTH INSURANCE DIS-
 23 CRIMINATION ON THE BASIS OF PREDICTIVE GE-
 24 NETIC INFORMATION OR GENETIC SERVICES.—

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

(B) NO DISCRIMINATION IN GROUP RATE BASED ON PREDICTIVE GENETIC INFORMATION.—

(i) IN GENERAL.—Subpart 2 of part A of title XXVII of the Public Health Service (42 U.S.C. 300gg-4 et seq.) is amended by adding at the end the following:

“SEC. 2707. PROHIBITING DISCRIMINATION AGAINST GROUPS ON THE BASIS OF PREDICTIVE GENETIC INFORMATION.

“A group health plan, and a health insurance issuer offering group health insurance coverage in connection with a group health plan, shall not deny eligibility to a group or adjust premium or contribution rates for a group on the basis of predictive genetic information concerning an individual in the group (or information about a request

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

3 (ii) CONFORMING AMENDMENTS.—

4 (I) Section 2702(b)(2)(A) of the
 5 Public Health Service Act (42 U.S.C.
 6 300gg–1(b)(2)(A)) is amended to read
 7 as follows:

8 “(A) to restrict the amount that an em-
 9 ployer may be charged for coverage under a
 10 group health plan, except as provided in section
 11 2707; or”.

12 (II) Section 2721(a) of the Pub-
 13 lic Health Service Act (42 U.S.C.
 14 300gg–21(a)) is amended by inserting
 15 “(other than subsections (a)(1)(F),
 16 (b) (with respect to cases relating to
 17 genetic information or information
 18 about a request or receipt of genetic
 19 services by an individual or family
 20 member of such individual), (c), (d),
 21 (e), (f), or (g) of section 2702 and
 22 section 2707)” after “subparts 1 and
 23 3”.

24 (2) LIMITATIONS ON GENETIC TESTING AND ON
 25 COLLECTION AND DISCLOSURE OF PREDICTIVE GE-

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

4 “(c) GENETIC TESTING.—

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

11 “(2) RULE OF CONSTRUCTION.—Nothing in
 12 this title shall be construed to limit the authority of
 13 a health care professional, who is providing treat-
 14 ment with respect to an individual and who is em-
 15 ployed by a group health plan or a health insurance
 16 issuer, to request that such individual or family
 17 member of such individual undergo a genetic test.
 18 Such a health care professional shall not require
 19 that such individual or family member undergo a ge-
 20 netic test.

21 “(d) COLLECTION OF PREDICTIVE GENETIC INFOR-
 22 MATION.—Except as provided in subsections (f) and (g),
 23 a group health plan, or a health insurance issuer offering
 24 health insurance coverage in connection with a group
 25 health plan, shall not request, require, collect, or purchase

1 predictive genetic information concerning an individual (or
 2 information about a request for or the receipt of genetic
 3 services by such individual or family member of such indi-
 4 vidual).

5 “(e) DISCLOSURE OF PREDICTIVE GENETIC INFOR-
 6 MATION.—A group health plan, or a health insurance
 7 issuer offering health insurance coverage in connection
 8 with a group health plan, shall not disclose predictive ge-
 9 netic information about an individual (or information
 10 about a request for or the receipt of genetic services by
 11 such individual or family member of such individual) to—

12 “(1) any entity that is a member of the same
 13 controlled group as such issuer or plan sponsor of
 14 such group health plan;

15 “(2) any other group health plan or health in-
 16 surance issuer or any insurance agent, third party
 17 administrator, or other person subject to regulation
 18 under State insurance laws;

19 “(3) the Medical Information Bureau or any
 20 other person that collects, compiles, publishes, or
 21 otherwise disseminates insurance information;

22 “(4) the individual’s employer or any plan spon-
 23 sor; or

24 “(5) any other person the Secretary may speci-
 25 fy in regulations.

1 “(f) INFORMATION FOR PAYMENT FOR GENETIC
2 SERVICES.—

3 “(1) IN GENERAL.—With respect to payment
4 for genetic services conducted concerning an indi-
5 vidual or the coordination of benefits, a group health
6 plan, or a health insurance issuer offering group
7 health insurance coverage in connection with a group
8 health plan, may request that the individual provide
9 the plan or issuer with evidence that such services
10 were performed.

11 “(2) RULE OF CONSTRUCTION.—Nothing in
12 paragraph (1) shall be construed to—

13 “(A) permit a group health plan or health
14 insurance issuer to request (or require) the re-
15 sults of the services referred to in such para-
16 graph; or

17 “(B) require that a group health plan or
18 health insurance issuer make payment for serv-
19 ices described in such paragraph where the in-
20 dividual involved has refused to provide evi-
21 dence of the performance of such services pur-
22 suant to a request by the plan or issuer in ac-
23 cordance with such paragraph.

24 “(g) INFORMATION FOR PAYMENT OF OTHER
25 CLAIMS.—With respect to the payment of claims for bene-

1 fits other than genetic services, a group health plan, or
 2 a health insurance issuer offering group health insurance
 3 coverage in connection with a group health plan, may re-
 4 quest that an individual provide predictive genetic infor-
 5 mation so long as such information—

6 “(1) is used solely for the payment of a claim;

7 “(2) is limited to information that is directly re-
 8 lated to and necessary for the payment of such claim
 9 and the claim would otherwise be denied but for the
 10 predictive genetic information; and

11 “(3) is used only by an individual (or individ-
 12 uals) within such plan or issuer who needs access to
 13 such information for purposes of payment of a
 14 claim.

15 “(h) RULES OF CONSTRUCTION.—

16 “(1) COLLECTION OR DISCLOSURE AUTHORIZED
 17 BY INDIVIDUAL.—The provisions of subsections (d)
 18 (regarding collection) and (e) shall not apply to an
 19 individual if the individual (or legal representative of
 20 the individual) provides prior, knowing, voluntary,
 21 and written authorization for the collection or disclo-
 22 sure of predictive genetic information.

23 “(2) DISCLOSURE FOR HEALTH CARE TREAT-
 24 MENT.—Nothing in this section shall be construed to
 25 limit or restrict the disclosure of predictive genetic

1 information from a health care provider to another
 2 health care provider for the purpose of providing
 3 health care treatment to the individual involved.

4 “(i) DEFINITIONS.—In this section:

5 “(1) CONTROLLED GROUP.—The term ‘con-
 6 trolled group’ means any group treated as a single
 7 employer under subsection (b), (c), (m), or (o) of
 8 section 414 of the Internal Revenue Code of 1986.

9 “(2) GROUP HEALTH PLAN, HEALTH INSUR-
 10 ANCE ISSUER.—The terms ‘group health plan’ and
 11 ‘health insurance issuer’ include a third party ad-
 12 ministrator or other person acting for or on behalf
 13 of such plan or issuer.”.

14 (3) DEFINITIONS.—Section 2791(d) of the Pub-
 15 lic Health Service Act (42 U.S.C. 300gg–91(d)) is
 16 amended by adding at the end the following new
 17 paragraphs:

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

20 “(A) the spouse of the individual;

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

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

4 “(16) GENETIC INFORMATION.—The term ‘ge-
5 netic information’ means information about genes,
6 gene products, or inherited characteristics that may
7 derive from an individual or a family member of
8 such individual (including information about a re-
9 quest for or the receipt of genetic services by such
10 individual or family member of such individual).

11 “(17) GENETIC SERVICES.—The term ‘genetic
12 services’ means health services, including genetic
13 tests, provided to obtain, assess, or interpret genetic
14 information for diagnostic and therapeutic purposes,
15 and for genetic education and counselling.

16 “(18) GENETIC TEST.—The term ‘genetic test’
17 means the analysis of human DNA, RNA, chro-
18 mosomes, proteins, and certain metabolites in order
19 to detect genotypes, mutations, or chromosomal
20 changes.

21 “(19) PREDICTIVE GENETIC INFORMATION.—

22 “(A) IN GENERAL.—The term ‘predictive
23 genetic information’ means—

24 “(i) information about an individual’s
25 genetic tests;

1 “(ii) information about genetic tests
2 of family members of the individual; or

3 “(iii) information about the occur-
4 rence of a disease or disorder in family
5 members.

6 “(B) LIMITATIONS.—The term ‘predictive
7 genetic information’ shall not include—

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

10 “(ii) information about chemical,
11 blood, or urine analyses of the individual,
12 unless these analyses are genetic tests; or

13 “(iii) information about physical
14 exams of the individual, and other informa-
15 tion relevant to determining the current
16 health status of the individual.”.

17 (b) AMENDMENT RELATING TO THE INDIVIDUAL
18 MARKET.—The first subpart 3 of part B of title XXVII
19 of the Public Health Service Act (42 U.S.C. 300gg–51 et
20 seq.) is amended—

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

22 and

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

1 **“SEC. 2753. PROHIBITION OF HEALTH INSURANCE DIS-**
2 **CRIMINATION AGAINST INDIVIDUALS ON THE**
3 **BASIS OF PREDICTIVE GENETIC INFORMA-**
4 **TION.**

5 “(a) INELIGIBILITY TO ENROLL.—A health insur-
6 ance issuer offering health insurance coverage in the indi-
7 vidual market shall not establish rules for eligibility to en-
8 roll in individual health insurance coverage that are based
9 on predictive genetic information concerning the individual
10 (or information about a request for or the receipt of ge-
11 netic services by such individual or family member of such
12 individual).

13 “(b) IN PREMIUM RATES.—A health insurance issuer
14 offering health insurance coverage in the individual mar-
15 ket shall not adjust premium rates on the basis of pre-
16 dictive genetic information concerning an individual (or in-
17 formation about a request for or the receipt of genetic
18 services by such individual or family member of such indi-
19 vidual).

20 **“SEC. 2754. LIMITATIONS ON GENETIC TESTING AND ON**
21 **COLLECTION AND DISCLOSURE OF PRE-**
22 **DICTIVE GENETIC INFORMATION.**

23 “(a) GENETIC TESTING.—

24 “(1) LIMITATION ON REQUESTING OR REQUIR-
25 ING GENETIC TESTING.—A health insurance issuer
26 offering health insurance coverage in the individual

1 market shall not request or require an individual or
2 a family member of such individual to undergo a ge-
3 netic test.

4 “(2) RULE OF CONSTRUCTION.—Nothing in
5 this title shall be construed to limit the authority of
6 a health care professional, who is providing treat-
7 ment with respect to an individual and who is em-
8 ployed by a group health plan or a health insurance
9 issuer, to request that such individual or family
10 member of such individual undergo a genetic test.
11 Such a health care professional shall not require
12 that such individual or family member undergo a ge-
13 netic test.

14 “(b) COLLECTION OF PREDICTIVE GENETIC INFOR-
15 MATION.—Except as provided in subsections (d) and (e),
16 a health insurance issuer offering health insurance cov-
17 erage in the individual market shall not request, require,
18 collect, or purchase predictive genetic information con-
19 cerning an individual (or information about a request for
20 or the receipt of genetic services by such individual or fam-
21 ily member of such individual).

22 “(c) DISCLOSURE OF PREDICTIVE GENETIC INFOR-
23 MATION.—A health insurance issuer offering health insur-
24 ance coverage in the individual market shall not disclose
25 predictive genetic information about an individual (or in-

1 formation about a request for or the receipt of genetic
 2 services by such individual or family member of such indi-
 3 vidual) to—

4 “(1) any entity that is a member of the same
 5 controlled group as such issuer or plan sponsor of
 6 such group health plan;

7 “(2) any other group health plan or health in-
 8 surance issuer or any insurance agent, third party
 9 administrator, or other person subject to regulation
 10 under State insurance laws;

11 “(3) the Medical Information Bureau or any
 12 other person that collects, compiles, publishes, or
 13 otherwise disseminates insurance information;

14 “(4) the individual’s employer or any plan spon-
 15 sor; or

16 “(5) any other person the Secretary may speci-
 17 fy in regulations.

18 “(d) INFORMATION FOR PAYMENT FOR GENETIC
 19 SERVICES.—

20 “(1) IN GENERAL.—With respect to payment
 21 for genetic services conducted concerning an indi-
 22 vidual or the coordination of benefits, a health insur-
 23 ance issuer offering health insurance coverage in the
 24 individual market may request that the individual

1 provide the plan or issuer with evidence that such
 2 services were performed.

3 “(2) RULE OF CONSTRUCTION.—Nothing in
 4 paragraph (1) shall be construed to—

5 “(A) permit a health insurance issuer to
 6 request (or require) the results of the services
 7 referred to in such paragraph; or

8 “(B) require that a health insurance issuer
 9 make payment for services described in such
 10 paragraph where the individual involved has re-
 11 fused to provide evidence of the performance of
 12 such services pursuant to a request by the plan
 13 or issuer in accordance with such paragraph.

14 “(e) INFORMATION FOR PAYMENT OF OTHER
 15 CLAIMS.—With respect to the payment of claims for bene-
 16 fits other than genetic services, a health insurance issuer
 17 offering health insurance coverage in the individual mar-
 18 ket may request that an individual provide predictive ge-
 19 netic information so long as such information—

20 “(1) is used solely for the payment of a claim;

21 “(2) is limited to information that is directly re-
 22 lated to and necessary for the payment of such claim
 23 and the claim would otherwise be denied but for the
 24 predictive genetic information; and

1 “(3) is used only by an individual (or individ-
 2 uals) within such plan or issuer who needs access to
 3 such information for purposes of payment of a
 4 claim.

5 “(f) RULES OF CONSTRUCTION.—

6 “(1) COLLECTION OR DISCLOSURE AUTHORIZED
 7 BY INDIVIDUAL.—The provisions of subsections (c)
 8 (regarding collection) and (d) shall not apply to an
 9 individual if the individual (or legal representative of
 10 the individual) provides prior, knowing, voluntary,
 11 and written authorization for the collection or disclo-
 12 sure of predictive genetic information.

13 “(2) DISCLOSURE FOR HEALTH CARE TREAT-
 14 MENT.—Nothing in this section shall be construed to
 15 limit or restrict the disclosure of predictive genetic
 16 information from a health care provider to another
 17 health care provider for the purpose of providing
 18 health care treatment to the individual involved.

19 “(g) DEFINITIONS.—In this section:

20 “(1) CONTROLLED GROUP.—The term ‘con-
 21 trolled group’ means any group treated as a single
 22 employer under subsection (b), (c), (m), or (o) of
 23 section 414 of the Internal Revenue Code of 1986.

24 “(2) GROUP HEALTH PLAN, HEALTH INSUR-
 25 ANCE ISSUER.—The terms ‘group health plan’ and

1 ‘health insurance issuer’ include a third party ad-
 2 ministrator or other person acting for or on behalf
 3 of such plan or issuer.”.

4 (c) ENFORCEMENT.—

5 (1) GROUP PLANS.—Section 2722 of the Public
 6 Health Service Act (42 U.S.C. 300gg–22) is amend-
 7 ed by adding at the end the following:

8 “(c) VIOLATION OF GENETIC DISCRIMINATION OR
 9 GENETIC DISCLOSURE PROVISIONS.—In any action under
 10 this section against any administrator of a group health
 11 plan, or health insurance issuer offering group health in-
 12 surance coverage in connection with a group health plan
 13 (including any third party administrator or other person
 14 acting for or on behalf of such plan or issuer) alleging
 15 a violation of subsections (a)(1)(F), (b) (with respect to
 16 cases relating to genetic information or information about
 17 a request or receipt of genetic services by an individual
 18 or family member of such individual), (c), (d), (e), (f), or
 19 (g) of section 2702 and section 2707 the court may award
 20 any appropriate legal or equitable relief. Such relief may
 21 include a requirement for the payment of attorney’s fees
 22 and costs, including the costs of expert witnesses.

23 “(d) CIVIL PENALTY.—The monetary provisions of
 24 section 308(b)(2)(C) of Public Law 101–336 (42 U.S.C.
 25 12188(b)(2)(C)) shall apply for purposes of the Secretary

1 enforcing the provisions referred to in subsection (c), ex-
 2 cept that any such relief awarded shall be paid only into
 3 the general fund of the Treasury.”.

4 (2) INDIVIDUAL PLANS.—Section 2761 of the
 5 Public Health Service Act (42 U.S.C. 300gg–45) is
 6 amended by adding at the end the following:

7 “(c) VIOLATION OF GENETIC DISCRIMINATION OR
 8 GENETIC DISCLOSURE PROVISIONS.—In any action under
 9 this section against any health insurance issuer offering
 10 health insurance coverage in the individual market (in-
 11 cluding any other person acting for or on behalf of such
 12 issuer) alleging a violation of sections 2753 and 2754 the
 13 court in which the action is commenced may award any
 14 appropriate legal or equitable relief. Such relief may in-
 15 clude a requirement for the payment of attorney’s fees and
 16 costs, including the costs of expert witnesses.

17 “(d) CIVIL PENALTY.—The monetary provisions of
 18 section 308(b)(2)(C) of Public Law 101–336 (42 U.S.C.
 19 12188(b)(2)(C)) shall apply for purposes of the Secretary
 20 enforcing the provisions referred to in subsection (c), ex-
 21 cept that any such relief awarded shall be paid only into
 22 the general fund of the Treasury.”.

23 (d) PREEMPTION.—

1 (1) GROUP MARKET.—Section 2723 of the Pub-
 2 lic Health Service Act (42 U.S.C. 300gg-23) is
 3 amended—

4 (A) in subsection (a)(1), by inserting “or
 5 (e)” after “subsection (b)”; and

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

7 “(e) SPECIAL RULE IN CASE OF GENETIC INFORMA-
 8 TION.—With respect to group health insurance coverage
 9 offered by a health insurance issuer, the provisions of this
 10 part relating to genetic information (including information
 11 about a request for or the receipt of genetic services by
 12 an individual or a family member of such individual) shall
 13 not be construed to supersede any provision of State law
 14 which establishes, implements, or continues in effect a
 15 standard, requirement, or remedy that more completely—

16 “(1) protects the confidentiality of genetic in-
 17 formation (including information about a request for
 18 or the receipt of genetic services by an individual or
 19 a family member of such individual) or the privacy
 20 of an individual or a family member of the individual
 21 with respect to genetic information (including infor-
 22 mation about a request for or the receipt of genetic
 23 services by an individual or a family member of such
 24 individual); or

1 “(2) prohibits discrimination on the basis of ge-
2 netic information than does this part.”.

3 (2) INDIVIDUAL MARKET.—Section 2762 of the
4 Public Health Service Act (42 U.S.C. 300gg–46) is
5 amended—

6 (A) in subsection (a), by inserting “and ex-
7 cept as provided in subsection (c),” after “Sub-
8 ject to subsection (b),”; and

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

10 “(c) SPECIAL RULE IN CASE OF GENETIC INFORMA-
11 TION.—With respect to individual health insurance cov-
12 erage offered by a health insurance issuer, the provisions
13 of this part (or part C insofar as it applies to this part)
14 relating to genetic information (including information
15 about a request for or the receipt of genetic services by
16 an individual or a family member of such individual) shall
17 not be construed to supersede any provision of State law
18 (as defined in section 2723(d)) which establishes, imple-
19 ments, or continues in effect a standard, requirement, or
20 remedy that more completely—

21 “(1) protects the confidentiality of genetic in-
22 formation (including information about a request for
23 or the receipt of genetic services of an individual or
24 a family member of such individual) or the privacy
25 of an individual or a family member of the individual

1 with respect to genetic information (including infor-
 2 mation about a request for or the receipt of genetic
 3 services by an individual or a family member of such
 4 individual) than does this part (or part C insofar as
 5 it applies to this part); or

6 “(2) prohibits discrimination on the basis of ge-
 7 netic information than does this part (or part C in-
 8 sofar as it applies to this part).”.

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

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

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

18 “(D) ELECTION NOT APPLICABLE TO RE-
 19 QUIREMENTS CONCERNING GENETIC INFORMA-
 20 TION.—The election described in subparagraph
 21 (A) shall not be available with respect to the
 22 provisions of subsections (a)(1)(F), (c), (d), (e),
 23 (f), and (g) of section 2702 and section 2707,
 24 and the provisions of section 2702(b) to the ex-
 25 tent that they apply to genetic information (or

1 information about a request for or the receipt
 2 of genetic services by an individual or a family
 3 member of such individual).”.

4 (f) AMENDMENT CONCERNING SUPPLEMENTAL EX-
 5 CEPTED BENEFITS.—

6 (1) GROUP MARKET.—Section 2721(d)(3) of
 7 the Public Health Service Act (42 U.S.C. 300gg–
 8 23(d)(3)) is amended by inserting “, other than the
 9 requirements of subsections (a)(1)(F), (b) (in cases
 10 relating to genetic information or information about
 11 a request for or the receipt of genetic services by an
 12 individual or a family member of such individual)),
 13 (c), (d), (e), (f) and (g) of section 2702 and section
 14 2707,” after “The requirements of this part”.

15 (2) INDIVIDUAL MARKET.—Section 2763(b) of
 16 the Public Health Service Act (42 U.S.C. 300gg–
 17 47(b)) is amended—

18 (A) by striking “The requirements of this
 19 part” and inserting the following:

20 “(1) IN GENERAL.—Except as provided in para-
 21 graph (2), the requirements of this part”; and

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

23 “(2) LIMITATION.—The requirements of sec-
 24 tions 2753 and 2754 shall apply to excepted benefits
 25 described in section 2791(c)(4).”.

1 (g) EFFECTIVE DATE.—

2 (1) IN GENERAL.—The amendments made by
3 this section shall apply with respect to—

4 (A) group health plans, and health insur-
5 ance coverage offered in connection with group
6 health plans, for plan years beginning; and

7 (B) health insurance coverage offered,
8 sold, issued, renewed, in effect, or operated in
9 the individual market, after;

10 October 1, 2002.

11 (2) SPECIAL RULE FOR COLLECTIVE BAR-
12 GAINING AGREEMENTS.—In the case of a group
13 health plan maintained pursuant to one or more col-
14 lective bargaining agreements between employee rep-
15 resentatives and one or more employers ratified be-
16 fore the date of the enactment of this Act, the
17 amendments made by this section shall not apply to
18 plan years beginning before the later of—

19 (A) the date on which the last of the col-
20 lective bargaining agreements relating to the
21 plan terminates (determined without regard to
22 any extension thereof agreed to after the date
23 of the enactment of this Act); or

24 (B) October 1, 2002.

1 For purposes of subparagraph (A), any plan amend-
 2 ment made pursuant to a collective bargaining
 3 agreement relating to the plan which amends the
 4 plan solely to conform to any requirement of the
 5 amendments made by this section shall not be treat-
 6 ed as a termination of such collective bargaining
 7 agreement.

8 **SEC. 403. AMENDMENTS TO INTERNAL REVENUE CODE OF**
 9 **1986.**

10 (a) PROHIBITION OF HEALTH INSURANCE DISCRIMI-
 11 NATION ON THE BASIS OF GENETIC SERVICES OR PRE-
 12 DICTIVE GENETIC INFORMATION.—

13 (1) NO ENROLLMENT RESTRICTION FOR GE-
 14 NETIC SERVICES.—Section 9802(a)(1)(F) of the In-
 15 ternal Revenue Code of 1986 (relating to eligibility
 16 to enroll) is amended by inserting before the period
 17 “(or information about a request for or the receipt
 18 of genetic services by such individual or family mem-
 19 ber of such individual)”.

20 (2) NO DISCRIMINATION IN GROUP RATE BASED
 21 ON PREDICTIVE GENETIC INFORMATION.—

22 (A) IN GENERAL.—Subchapter B of chap-
 23 ter 100 of such Code (relating to other require-
 24 ments) is amended by adding at the end the fol-
 25 lowing:

1 **“SEC. 9813. PROHIBITING DISCRIMINATION AGAINST**
 2 **GROUPS ON THE BASIS OF PREDICTIVE GE-**
 3 **NETIC INFORMATION.**

4 “A group health plan shall not deny eligibility to a
 5 group or adjust premium or contribution rates for a group
 6 on the basis of predictive genetic information concerning
 7 an individual in the group (or information about a request
 8 for or the receipt of genetic services by such individual
 9 or family member of such individual).”.

10 (B) CONFORMING AMENDMENTS.—

11 (i) Section 9802(b)(2)(A) of such
 12 Code is amended to read as follows:

13 “(A) to restrict the amount that an em-
 14 ployer may be charged for coverage under a
 15 group health plan, except as provided in section
 16 9813; or”.

17 (ii) Section 9831(a) of such Code (re-
 18 lating to exception for certain plans) is
 19 amended by inserting “(other than sub-
 20 section (a)(1)(F), (b) (with respect to
 21 cases relating to genetic information or in-
 22 formation about a request for or receipt of
 23 genetic services by an individual or family
 24 member of such individual), (d) (e), (f), (g)
 25 or (h) of section 9802 or section 9813)”
 26 after “chapter”.

1 (iii) The table of sections for sub-
 2 chapter B of chapter 100 of such Code is
 3 amended by adding at the end the fol-
 4 lowing new item:

“Sec. 9813. Prohibiting discrimination against groups on the
 basis of predictive genetic information.”.

5 (b) LIMITATIONS ON GENETIC TESTING AND ON
 6 COLLECTION AND DISCLOSURE OF PREDICTIVE GENETIC
 7 INFORMATION.—Section 9802 of the Internal Revenue
 8 Code of 1986 (relating to prohibiting discrimination
 9 against individual participants and beneficiaries based on
 10 health status) is amended by adding at the end the fol-
 11 lowing new subsections:

12 “(d) GENETIC TESTING.—

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

17 “(2) RULE OF CONSTRUCTION.—Nothing in
 18 this chapter shall be construed to limit the authority
 19 of a health care professional, who is providing treat-
 20 ment with respect to an individual and who is em-
 21 ployed by a group health plan, to request that such
 22 individual or family member of such individual un-
 23 dergo a genetic test. Such a health care professional

1 shall not require that such individual or family mem-
2 ber undergo a genetic test.

3 “(e) COLLECTION OF PREDICTIVE GENETIC INFOR-
4 MATION.—Except as provided in subsections (g) and (h),
5 a group health plan shall not request, require, collect, or
6 purchase predictive genetic information concerning an in-
7 dividual (or information about a request for or the receipt
8 of genetic services by such individual or family member
9 of such individual).

10 “(f) DISCLOSURE OF PREDICTIVE GENETIC INFOR-
11 MATION.—A group health plan shall not disclose predictive
12 genetic information about an individual (or information
13 about a request for or the receipt of genetic services by
14 such individual or family member of such individual) to—

15 “(1) any entity that is a member of the same
16 controlled group as such issuer or plan sponsor of
17 such group health plan,

18 “(2) any other group health plan or health in-
19 surance issuer or any insurance agent, third party
20 administrator, or other person subject to regulation
21 under State insurance laws,

22 “(3) the Medical Information Bureau or any
23 other person that collects, compiles, publishes, or
24 otherwise disseminates insurance information,

1 “(4) the individual’s employer or any plan spon-
2 sor, or

3 “(5) any other person the Secretary may speci-
4 fy in regulations.

5 “(g) INFORMATION FOR PAYMENT FOR GENETIC
6 SERVICES.—

7 “(1) IN GENERAL.—With respect to payment
8 for genetic services conducted concerning an indi-
9 vidual or the coordination of benefits, a group health
10 plan may request that the individual provide the
11 plan with evidence that such services were per-
12 formed.

13 “(2) RULE OF CONSTRUCTION.—Nothing in
14 paragraph (1) shall be construed to—

15 “(A) permit a group health plan to request
16 (or require) the results of the services referred
17 to in such paragraph, or

18 “(B) require that a group health plan
19 make payment for services described in such
20 paragraph where the individual involved has re-
21 fused to provide evidence of the performance of
22 such services pursuant to a request by the plan
23 in accordance with such paragraph.

24 “(h) INFORMATION FOR PAYMENT OF OTHER
25 CLAIMS.—With respect to the payment of claims for bene-

1 fits other than genetic services, a group health plan may
 2 request that an individual provide predictive genetic infor-
 3 mation so long as such information—

4 “(1) is used solely for the payment of a claim,

5 “(2) is limited to information that is directly re-
 6 lated to and necessary for the payment of such claim
 7 and the claim would otherwise be denied but for the
 8 predictive genetic information, and

9 “(3) is used only by an individual within such
 10 plan or issuer who needs access to such information
 11 for purposes of payment of a claim.

12 “(i) RULES OF CONSTRUCTION.—

13 “(1) COLLECTION OR DISCLOSURE AUTHORIZED
 14 BY INDIVIDUAL.—The provisions of subsections (e)
 15 (regarding collection) and (f) shall not apply to an
 16 individual if the individual (or legal representative of
 17 the individual) provides prior, knowing, voluntary,
 18 and written authorization for the collection or disclo-
 19 sure of predictive genetic information.

20 “(2) DISCLOSURE FOR HEALTH CARE TREAT-
 21 MENT.—Nothing in this section shall be construed to
 22 limit or restrict the disclosure of predictive genetic
 23 information from a health care provider to another
 24 health care provider for the purpose of providing
 25 health care treatment to the individual involved.

1 “(j) DEFINITIONS.—In this section:

2 “(1) CONTROLLED GROUP.—The term ‘con-
3 trolled group’ means any group treated as a single
4 employer under subsections (b), (c), (m), or (o) of
5 section 414.

6 “(2) GROUP HEALTH PLAN, HEALTH INSUR-
7 ANCE ISSUER.—The terms ‘group health plan’ and
8 ‘health insurance issuer’ include a third party ad-
9 ministrator or other person acting for or on behalf
10 of such plan or issuer.

11 “(k) VIOLATION OF GENETIC DISCRIMINATION OR
12 GENETIC DISCLOSURE PROVISIONS.—In any action under
13 this section against any administrator of a group health
14 plan (including any third party administrator or other per-
15 son acting for or on behalf of such plan) alleging a viola-
16 tion of subsection (a)(1)(F), (b) (with respect to cases re-
17 lating to genetic information or information about a re-
18 quest or receipt of genetic services by an individual or fam-
19 ily member of such individual), (d), (e), (f), (g) or (h) or
20 section 9813, the court may award any appropriate legal
21 or equitable relief. Such relief may include a requirement
22 for the payment of attorney’s fees and costs, including the
23 costs of expert witnesses.

24 “(l) CIVIL PENALTY.—The monetary provisions of
25 section 308(b)(2)(C) of Public Law 101–336 (42 U.S.C.

1 12188(b)(2)(C)) shall apply for purposes of the Secretary
 2 enforcing the provisions referred to in subsection (k), ex-
 3 cept that any such relief awarded shall be paid only into
 4 the general fund of the Treasury.”.

5 (c) DEFINITIONS.—Section 9832(d) of the Internal
 6 Revenue Code of 1986 (relating to other definitions) is
 7 amended by adding at the end the following new para-
 8 graphs:

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

11 “(A) the spouse of the individual,

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

15 “(C) any other individuals related by blood
 16 to the individual or to the spouse or child de-
 17 scribed in subparagraph (A) or (B).

18 “(7) GENETIC INFORMATION.—The term ‘ge-
 19 netic information’ means information about genes,
 20 gene products, or inherited characteristics that may
 21 derive from an individual or a family member of
 22 such individual (including information about a re-
 23 quest for or the receipt of genetic services by such
 24 individual or family member of such individual).

1 “(8) GENETIC SERVICES.—The term ‘genetic
2 services’ means health services, including genetic
3 tests, provided to obtain, assess, or interpret genetic
4 information for diagnostic and therapeutic purposes,
5 and for genetic education and counseling.

6 “(9) GENETIC TEST.—The term ‘genetic test’
7 means the analysis of human DNA, RNA, chro-
8 mosomes, proteins, and certain metabolites in order
9 to detect genotypes, mutations, or chromosomal
10 changes.

11 “(10) PREDICTIVE GENETIC INFORMATION.—

12 “(A) IN GENERAL.—The term ‘predictive
13 genetic information’ means—

14 “(i) information about an individual’s
15 genetic tests,

16 “(ii) information about genetic tests
17 of family members of the individual, or

18 “(iii) information about the occur-
19 rence of a disease or disorder in family
20 members.

21 “(B) LIMITATIONS.—The term ‘predictive
22 genetic information’ shall not include—

23 “(i) information about the sex or age
24 of the individual,

1 “(ii) information about chemical,
2 blood, or urine analyses of the individual,
3 unless these analyses are genetic tests, or
4 “(iii) information about physical
5 exams of the individual, and other informa-
6 tion relevant to determining the current
7 health status of the individual.”.

8 (d) EFFECTIVE DATE.—

9 (1) IN GENERAL.—Except as provided in this
10 section, this section and the amendments made by
11 this section shall apply with respect to group health
12 plans for plan years beginning after October 1,
13 2002.

14 (2) SPECIAL RULE FOR COLLECTIVE BAR-
15 GAINING AGREEMENTS.—In the case of a group
16 health plan maintained pursuant to one or more col-
17 lective bargaining agreements between employee rep-
18 resentatives and one or more employers ratified be-
19 fore the date of the enactment of this Act, this sec-
20 tion and the amendments made by this section shall
21 not apply to plan years beginning before the later
22 of—

23 (A) the date on which the last of the col-
24 lective bargaining agreements relating to the
25 plan terminates (determined without regard to

any extension thereof agreed to after the date
of the enactment of this Act), or

(B) October 1, 2002.

For purposes of subparagraph (A), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement of the amendments made by this section shall not be treated as a termination of such collective bargaining agreement.

SEC. 404. AMENDMENTS TO TITLE XVIII OF THE SOCIAL SECURITY ACT RELATING TO MEDIGAP.

(a) NONDISCRIMINATION.—

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

“(E)(i) An issuer of a medicare supplemental policy shall not deny or condition the issuance or effectiveness of the policy, and shall not discriminate in the pricing of the policy (including the adjustment of premium rates) of an eligible individual on the basis of predictive genetic information concerning the individual (or information about a request for, or the receipt

1 of, genetic services by such individual or family
 2 member of such individual).

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

7 (2) EFFECTIVE DATE.—The amendment made
 8 by paragraph (1) shall apply with respect to a policy
 9 for policy years beginning after October 1, 2002.

10 (b) LIMITATIONS ON GENETIC TESTING AND ON
 11 COLLECTION AND DISCLOSURE OF PREDICTIVE GENETIC
 12 INFORMATION.—

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

16 “(v) LIMITATIONS ON GENETIC TESTING AND ON
 17 COLLECTION AND DISCLOSURE OF PREDICTIVE GENETIC
 18 INFORMATION.—

19 “(1) GENETIC TESTING.—

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

1 “(B) RULE OF CONSTRUCTION.—Nothing
 2 in this title shall be construed to limit the au-
 3 thority of a health care professional, who is pro-
 4 viding treatment with respect to an individual
 5 and who is employed by an issuer of a medicare
 6 supplemental policy, to request that such indi-
 7 vidual or family member of such individual un-
 8 dergo a genetic test. Such a health care profes-
 9 sional shall not require that such individual or
 10 family member undergo a genetic test.

11 “(2) COLLECTION OF PREDICTIVE GENETIC IN-
 12 FORMATION.—Except as provided in paragraphs (4)
 13 and (5), an issuer of a medicare supplemental policy
 14 shall not request, require, collect, or purchase pre-
 15 dictive genetic information concerning an individual
 16 (or information about a request for or the receipt of
 17 genetic services by such individual or family member
 18 of such individual).

19 “(3) DISCLOSURE OF PREDICTIVE GENETIC IN-
 20 FORMATION.—An issuer of a medicare supplemental
 21 policy shall not disclose predictive genetic informa-
 22 tion about an individual (or information about a re-
 23 quest for or the receipt of genetic services by such
 24 individual or family member of such individual) to—

1 “(A) any entity that is a member of the
2 same controlled group as such issuer;

3 “(B) any issuer of a medicare supple-
4 mental policy, group health plan or health in-
5 surance issuer, or any insurance agent, third
6 party administrator, or other person subject to
7 regulation under State insurance laws;

8 “(C) the Medical Information Bureau or
9 any other person that collects, compiles, pub-
10 lishes, or otherwise disseminates insurance in-
11 formation;

12 “(D) the individual’s employer or any plan
13 sponsor; or

14 “(E) any other person the Secretary may
15 specify in regulations.

16 “(4) INFORMATION FOR PAYMENT FOR GE-
17 NETIC SERVICES.—

18 “(A) IN GENERAL.—With respect to pay-
19 ment for genetic services conducted concerning
20 an individual or the coordination of benefits, an
21 issuer of a medicare supplemental policy may
22 request that the individual provide the issuer
23 with evidence that such services were per-
24 formed.

1 “(B) RULE OF CONSTRUCTION.—Nothing
2 in subparagraph (A) shall be construed to—

3 “(i) permit an issuer to request (or
4 require) the results of the services referred
5 to in such subparagraph; or

6 “(ii) require that an issuer make pay-
7 ment for services described in such sub-
8 paragraph where the individual involved
9 has refused to provide evidence of the per-
10 formance of such services pursuant to a re-
11 quest by the issuer in accordance with such
12 subparagraph.

13 “(5) INFORMATION FOR PAYMENT OF OTHER
14 CLAIMS.—With respect to the payment of claims for
15 benefits other than genetic services, an issuer of a
16 medicare supplemental policy may request that an
17 individual provide predictive genetic information so
18 long as such information—

19 “(A) is used solely for the payment of a
20 claim;

21 “(B) is limited to information that is di-
22 rectly related to and necessary for the payment
23 of such claim and the claim would otherwise be
24 denied but for the predictive genetic informa-
25 tion; and

1 “(C) is used only by an individual (or indi-
 2 viduals) within such issuer who needs access to
 3 such information for purposes of payment of a
 4 claim.

5 “(6) RULES OF CONSTRUCTION.—

6 “(A) COLLECTION OR DISCLOSURE AU-
 7 THORIZED BY INDIVIDUAL.—The provisions of
 8 paragraphs (2) (regarding collection) and (3)
 9 shall not apply to an individual if the individual
 10 (or legal representative of the individual) pro-
 11 vides prior, knowing, voluntary, and written au-
 12 thorization for the collection or disclosure of
 13 predictive genetic information.

14 “(B) DISCLOSURE FOR HEALTH CARE
 15 TREATMENT.—Nothing in this section shall be
 16 construed to limit or restrict the disclosure of
 17 predictive genetic information from a health
 18 care provider to another health care provider
 19 for the purpose of providing health care treat-
 20 ment to the individual involved.

21 “(7) VIOLATION OF GENETIC DISCRIMINATION
 22 OR GENETIC DISCLOSURE PROVISIONS.—In any ac-
 23 tion under this subsection against any administrator
 24 of a medicare supplemental policy (including any
 25 third party administrator or other person acting for

1 or on behalf of such policy) alleging a violation of
2 this subsection, the court may award any appro-
3 priate legal or equitable relief. Such relief may in-
4 clude a requirement for the payment of attorney's
5 fees and costs, including the costs of expert wit-
6 nesses.

7 “(8) CIVIL PENALTY.—The monetary provisions
8 of section 308(b)(2)(C) of Public Law 101–336 (42
9 U.S.C. 12188(b)(2)(C)) shall apply for purposes of
10 the Secretary enforcing the provisions of this sub-
11 section, except that any such relief awarded shall be
12 paid only into the general fund of the Treasury.

13 “(9) SPECIAL RULE IN CASE OF GENETIC IN-
14 FORMATION.—This subsection (relating to genetic
15 information or information about a request for, or
16 the receipt of, genetic services by an individual or a
17 family member of such individual) shall not be con-
18 strued to supersede any provision of State law which
19 establishes, implements, or continues in effect a
20 standard, requirement, or remedy that more
21 completely—

22 “(A) protects the confidentiality of genetic
23 information (including information about a re-
24 quest for, or the receipt of, genetic services by
25 an individual or a family member of such indi-

vidual) or the privacy of an individual or a family member of the individual with respect to genetic information (including information about a request for, or the receipt of, genetic services by an individual or a family member of such individual) than does this subsection; or

“(B) prohibits discrimination on the basis of genetic information than does this subsection.

“(10) DEFINITIONS.—In this subsection:

“(A) CONTROLLED GROUP.—The term ‘controlled group’ means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986.

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

“(i) the spouse of the individual;

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

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

1 “(C) GENETIC INFORMATION.—The term
2 ‘genetic information’ means information about
3 genes, gene products, or inherited characteris-
4 tics that may derive from an individual or a
5 family member of such individual (including in-
6 formation about a request for, or the receipt of,
7 genetic services by such individual or family
8 member of such individual).

9 “(D) GENETIC SERVICES.—The term ‘ge-
10 netic services’ means health services, including
11 genetic tests, provided to obtain, assess, or in-
12 terpret genetic information for diagnostic and
13 therapeutic purposes, and for genetic education
14 and counseling.

15 “(E) GENETIC TEST.—The term ‘genetic
16 test’ means the analysis of human DNA, RNA,
17 chromosomes, proteins, and certain metabolites
18 in order to detect genotypes, mutations, or
19 chromosomal changes.

20 “(F) 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 “(G) PREDICTIVE GENETIC INFORMA-
2 TION.—

3 “(i) IN GENERAL.—The term ‘pre-
4 dictive genetic information’ means—

5 “(I) information about an indi-
6 vidual’s genetic tests;

7 “(II) information about genetic
8 tests of family members of the indi-
9 vidual; or

10 “(III) information about the oc-
11 currence of a disease or disorder in
12 family members.

13 “(ii) LIMITATIONS.—The term ‘pre-
14 dictive genetic information’ shall not
15 include—

16 “(I) information about the sex or
17 age of the individual;

18 “(II) information about chemical,
19 blood, or urine analyses of the indi-
20 vidual, unless these analyses are ge-
21 netic tests; or

22 “(III) information about physical
23 exams of the individual, and other in-
24 formation relevant to determining the

1 current health status of the indi-
2 vidual.”.

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

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

10 (3) EFFECTIVE DATE.—The amendments made
11 by this subsection shall apply with respect to an
12 issuer of a medicare supplemental policy for policy
13 years beginning after October 1, 2002.

14 (c) TRANSITION PROVISIONS.—

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

24 (2) NAIC STANDARDS.—If, not later than June
25 30, 2002, the National Association of Insurance

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

12 (3) SECRETARY STANDARDS.—If the NAIC
13 does not make the modifications described in para-
14 graph (2) within the period specified in such para-
15 graph, the Secretary of Health and Human Services
16 shall, not later than October 1, 2002, make the
17 modifications described in such paragraph and such
18 revised regulation incorporating the modifications
19 shall be considered to be the appropriate regulation
20 for the purposes of such section.

21 (4) DATE SPECIFIED.—

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

1 (i) the date the State changes its stat-
2 utes or regulations to conform its regu-
3 latory program to the changes made by
4 this section, or

5 (ii) October 1, 2002.

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

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

13 (ii) having a legislature which is not
14 scheduled to meet in 2002 in a legislative
15 session in which such legislation may be
16 considered,

17 the date specified in this paragraph is the first
18 day of the first calendar quarter beginning after
19 the close of the first legislative session of the
20 State legislature that begins on or after July 1,
21 2002. For purposes of the previous sentence, in
22 the case of a State that has a 2-year legislative
23 session, each year of such session shall be
24 deemed to be a separate regular session of the
25 State legislature.

1 **Subtitle B—Prohibition of Employ-**
2 **ment Discrimination on the**
3 **Basis of Predictive Genetic In-**
4 **formation**

5 **SEC. 411. DEFINITIONS.**

6 In this subtitle:

7 (1) EMPLOYEE; EMPLOYER; EMPLOYMENT
8 AGENCY; LABOR ORGANIZATION; MEMBER.—The
9 terms “employee”, “employer”, “employment agen-
10 cy”, and “labor organization” have the meanings
11 given such terms in section 701 of the Civil Rights
12 Act of 1964 (42 U.S.C. 2000e), except that the
13 terms “employee” and “employer” shall also include
14 the meanings given such terms in section 717 of the
15 Civil Rights Act of 1964 (42 U.S.C. 2000e–16). The
16 terms “employee” and “member” include an appli-
17 cant for employment and an applicant for member-
18 ship in a labor organization, respectively.

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

21 (A) the spouse of the individual;

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

1 (C) any other individuals related by blood
2 to the individual or to the spouse or child de-
3 scribed in subparagraph (A) or (B).

4 (3) GENETIC MONITORING.—The term “genetic
5 monitoring” means the periodic examination of em-
6 ployees to evaluate acquired modifications to their
7 genetic material, such as chromosomal damage or
8 evidence of increased occurrence of mutations, that
9 may have developed in the course of employment due
10 to exposure to toxic substances in the workplace, in
11 order to identify, evaluate, and respond to the ef-
12 fects of or control adverse environmental exposures
13 in the workplace.

14 (4) GENETIC SERVICES.—The term “genetic
15 services” means health services, including genetic
16 tests, provided to obtain, assess, or interpret genetic
17 information for diagnostic and therapeutic purposes,
18 and for genetic education and counseling.

19 (5) GENETIC TEST.—The term “genetic test”
20 means the analysis of human DNA, RNA, chro-
21 mosomes, proteins, and certain metabolites in order
22 to detect genotypes, mutations, or chromosomal
23 changes.

24 (6) PREDICTIVE GENETIC INFORMATION.—

1 (A) IN GENERAL.—The term “predictive
2 genetic information” means—

3 (i) information about an individual’s
4 genetic tests;

5 (ii) information about genetic tests of
6 family members of the individual; or

7 (iii) information about the occurrence
8 of a disease or disorder in family members.

9 (B) LIMITATIONS.—The term “predictive
10 genetic information” shall not include—

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

13 (ii) information about chemical, blood,
14 or urine analyses of the individual, unless
15 these analyses are genetic tests; or

16 (iii) information about physical exams
17 of the individual, and other information
18 relevant to determining the current health
19 status of the individual.

20 **SEC. 412. EMPLOYER PRACTICES.**

21 (a) IN GENERAL.—It shall be an unlawful employ-
22 ment practice for an employer—

23 (1) to fail or refuse to hire or to discharge any
24 individual, or otherwise to discriminate against any
25 individual with respect to the compensation, terms,

1 conditions, or privileges of employment of the indi-
 2 vidual, because of predictive genetic information
 3 with respect to the individual (or information about
 4 a request for or the receipt of genetic services by
 5 such individual or family member of such individual;

6 (2) to limit, segregate, or classify the employees
 7 of the employer in any way that would deprive or
 8 tend to deprive any individual of employment oppor-
 9 tunities or otherwise adversely affect the status of
 10 the individual as an employee, because of predictive
 11 genetic information with respect to the individual, or
 12 information about a request for or the receipt of ge-
 13 netic services by such individual or family member
 14 of such individual; or

15 (3) to request, require, collect or purchase pre-
 16 dictive genetic information with respect to an indi-
 17 vidual or a family member of the individual except—

18 (A) where used for genetic monitoring of
 19 biological effects of toxic substances in the
 20 workplace, but only if—

21 (i) the employee has provided prior,
 22 knowing, voluntary, and written authoriza-
 23 tion;

24 (ii) the employee is informed of indi-
 25 vidual monitoring results;

1 (iii) the monitoring conforms to any
2 genetic monitoring regulations that may be
3 promulgated by the Secretary of Labor
4 pursuant to the Occupational Safety and
5 Health Act of 1970 (29 U.S.C. 651 et
6 seq.) or the Federal Mine Safety and
7 Health Act of 1977 (30 U.S.C. 801 et
8 seq.); and

9 (iv) the employer, excluding any li-
10 censed health care professional that is in-
11 volved in the genetic monitoring program,
12 receives the results of the monitoring only
13 in aggregate terms that do not disclose the
14 identity of specific employees; or

15 (B) where genetic services are offered by
16 the employer and the employee provides prior,
17 knowing, voluntary, and written authorization,
18 and only the employee or family member of
19 such employee receives the results of such serv-
20 ices.

21 (b) LIMITATION.—In the case of predictive genetic in-
22 formation to which subparagraph (A) or (B) of subsection
23 (a)(3) applies, such information may not be used in viola-
24 tion of paragraph (1) or (2) of subsection (a).

1 **SEC. 413. EMPLOYMENT AGENCY PRACTICES.**

2 It shall be an unlawful employment practice for an
3 employment agency—

4 (1) to fail or refuse to refer for employment, or
5 otherwise to discriminate against, any individual be-
6 cause of predictive genetic information with respect
7 to the individual (or information about a request for
8 or the receipt of genetic services by such individual
9 or family member of such individual);

10 (2) to limit, segregate, or classify individuals or
11 fail or refuse to refer for employment any individual
12 in any way that would deprive or tend to deprive any
13 individual of employment opportunities or would
14 limit the employment opportunities or otherwise ad-
15 versely affect the status of the individual as an em-
16 ployee, because of predictive genetic information
17 with respect to the individual (or information about
18 a request for or the receipt of genetic services by
19 such individual or family member of such indi-
20 vidual);

21 (3) to request, require, collect or purchase pre-
22 dictive genetic information with respect to an indi-
23 vidual (or information about a request for or the re-
24 ceipt of genetic services by such individual or family
25 member of such individual); or

1 (4) to cause or attempt to cause an employer to
2 discriminate against an individual in violation of this
3 subtitle.

4 **SEC. 414. LABOR ORGANIZATION PRACTICES.**

5 It shall be an unlawful employment practice for a
6 labor organization—

7 (1) to exclude or to expel from the membership
8 of the organization, or otherwise to discriminate
9 against, any individual because of predictive genetic
10 information with respect to the individual (or infor-
11 mation about a request for or the receipt of genetic
12 services by such individual or family member of such
13 individual);

14 (2) to limit, segregate, or classify the members
15 of the organization, or fail or refuse to refer for em-
16 ployment any individual, in any way that would de-
17 prive or tend to deprive any individual of employ-
18 ment opportunities, or would limit the employment
19 opportunities or otherwise adversely affect the status
20 of the individual as an employee, because of pre-
21 dictive genetic information with respect to the indi-
22 vidual (or information about a request for or the re-
23 ceipt of genetic services by such individual or family
24 member of such individual);

1 (3) to request, require, collect or purchase pre-
2 dictive genetic information with respect to an indi-
3 vidual (or information about a request for or the re-
4 ceipt of genetic services by such individual or family
5 member of such individual); or

6 (4) to cause or attempt to cause an employer to
7 discriminate against an individual in violation of this
8 subtitle.

9 **SEC. 415. TRAINING PROGRAMS.**

10 It shall be an unlawful employment practice for any
11 employer, labor organization, or joint labor-management
12 committee controlling apprenticeship or other training or
13 retraining, including on-the-job training programs—

14 (1) to discriminate against any individual be-
15 cause of predictive genetic information with respect
16 to the individual (or information about a request for
17 or the receipt of genetic services by such individual),
18 in admission to, or employment in, any program es-
19 tablished to provide apprenticeship or other training
20 or retraining;

21 (2) to limit, segregate, or classify the members
22 of the organization, or fail or refuse to refer for em-
23 ployment any individual, in any way that would de-
24 prive or tend to deprive any individual of employ-
25 ment opportunities, or would limit the employment

1 opportunities or otherwise adversely affect the status
 2 of the individual as an employee, because of pre-
 3 dictive genetic information with respect to the indi-
 4 vidual (or information about a request for or receipt
 5 of genetic services by such individual or family mem-
 6 ber of such individual);

7 (3) to request, require, collect or purchase pre-
 8 dictive genetic information with respect to an indi-
 9 vidual (or information about a request for or receipt
 10 of genetic services by such individual or family mem-
 11 ber of such individual); or

12 (4) to cause or attempt to cause an employer to
 13 discriminate against an individual in violation of this
 14 subtitle.

15 **SEC. 416. MAINTENANCE AND DISCLOSURE OF PREDICTIVE**
 16 **GENETIC INFORMATION.**

17 (a) MAINTENANCE OF PREDICTIVE GENETIC INFOR-
 18 MATION.—If an employer possesses predictive genetic in-
 19 formation about an employee (or information about a re-
 20 quest for or receipt of genetic services by such employee
 21 or family member of such employee), such information
 22 shall be treated or maintained as part of the employee's
 23 confidential medical records.

24 (b) DISCLOSURE OF PREDICTIVE GENETIC INFORMA-
 25 TION.—An employer shall not disclose predictive genetic

1 information (or information about a request for or receipt
 2 of genetic services by such employee or family member of
 3 such employee) except—

4 (1) to the employee who is the subject of the in-
 5 formation at the request of the employee;

6 (2) to an occupational or other health re-
 7 searcher if the research is conducted in compliance
 8 with the regulations and protections provided for
 9 under part 46 of title 45, Code of Federal Regula-
 10 tions;

11 (3) under legal compulsion of a Federal court
 12 order, except that if the court order was secured
 13 without the knowledge of the individual to whom the
 14 information refers, the employer shall provide the in-
 15 dividual with adequate notice to challenge the court
 16 order unless the court order also imposes confiden-
 17 tiality requirements; and

18 (4) to government officials who are inves-
 19 tigating compliance with this Act if the information
 20 is relevant to the investigation.

21 **SEC. 417. CIVIL ACTION.**

22 (a) IN GENERAL.—One or more employees, members
 23 of a labor organization, or participants in training pro-
 24 grams may bring an action in a Federal or State court
 25 of competent jurisdiction against an employer, employ-

1 ment agency, labor organization, or joint labor-manage-
 2 ment committee or training program who commits a viola-
 3 tion of this subtitle.

4 (b) ENFORCEMENT BY THE EQUAL EMPLOYMENT
 5 OPPORTUNITY COMMISSION.—The powers, remedies, and
 6 procedures set forth in sections 705, 706, 707, 709, 710,
 7 and 717 of the Civil Rights Act of 1964 (42 U.S.C.
 8 2000e-4, 2000e-5, 2000e-6, 2000e-8, 2000e-9, and
 9 2000e-16) shall be the powers, remedies, and procedures
 10 provided to the Equal Employment Opportunity Commis-
 11 sion to enforce this subtitle. The Commission may promul-
 12 gate regulations to implement these powers, remedies, and
 13 procedures.

14 (c) REMEDY.—A Federal or State court may award
 15 any appropriate legal or equitable relief under this section.
 16 Such relief may include a requirement for the payment
 17 of attorney’s fees and costs, including the costs of experts.

18 **SEC. 418. CONSTRUCTION.**

19 Nothing in this subtitle shall be construed to—

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

1 (2) limit the rights or protections of an indi-
 2 vidual under the Rehabilitation Act of 1973 (29
 3 U.S.C. 701 et seq.);

4 (3) limit the rights or protections of an indi-
 5 vidual under any other Federal or State statute that
 6 provides equal or greater protection to an individual
 7 than the rights accorded under this Act;

8 (4) apply to the Armed Forces Repository of
 9 Specimen Samples for the Identification of Remains;
 10 or

11 (5) limit the statutory or regulatory authority
 12 of the Occupational Safety and Health Administra-
 13 tion or the Mine Safety and Health Administration
 14 to promulgate or enforce workplace safety and
 15 health laws and regulations.

16 **SEC. 419. AUTHORIZATION OF APPROPRIATIONS.**

17 There are authorized to be appropriated such sums
 18 as may be necessary to carry out this subtitle.

19 **SEC. 420. EFFECTIVE DATE.**

20 This subtitle shall become effective on October 1,
 21 2002.

1 **TITLE V—EMPLOYMENT**
 2 **NONDISCRIMINATION**

3 **SEC. 501. SHORT TITLE.**

4 This title may be cited as the “Employment Non-Dis-
 5 crimination Act of 2001”.

6 **SEC. 502. PURPOSES.**

7 The purposes of this title are—

8 (1) to provide a comprehensive Federal prohibi-
 9 tion of employment discrimination on the basis of
 10 sexual orientation;

11 (2) to provide meaningful and effective rem-
 12 edies for employment discrimination on the basis of
 13 sexual orientation; and

14 (3) to invoke congressional powers, including
 15 the powers to enforce the 14th amendment to the
 16 Constitution and to regulate interstate commerce, in
 17 order to prohibit employment discrimination on the
 18 basis of sexual orientation.

19 **SEC. 503. DEFINITIONS.**

20 In this title:

21 (1) COMMISSION.—The term “Commission”
 22 means the Equal Employment Opportunity Commis-
 23 sion.

1 (2) COVERED ENTITY.—The term “covered en-
2 tity” means an employer, employment agency, labor
3 organization, or joint labor-management committee.

4 (3) EMPLOYER.—The term “employer”
5 means—

6 (A) a person engaged in an industry affect-
7 ing commerce (as defined in section 701(h) of
8 the Civil Rights Act of 1964 (42 U.S.C.
9 2000e(h))) who has 15 or more employees (as
10 defined in section 701(f) of such Act (42 U.S.C.
11 2000e(f)) for each working day in each of 20 or
12 more calendar weeks in the current or pre-
13 ceding calendar year, and any agent of such a
14 person, but does not include a bona fide private
15 membership club (other than a labor organiza-
16 tion) that is exempt from taxation under section
17 501(c) of the Internal Revenue Code of 1986;

18 (B) an employing authority to which sec-
19 tion 302(a)(1) of the Government Employee
20 Rights Act of 1991 (2 U.S.C. 1202(a)(1)) ap-
21 plies;

22 (C) an employing office, as defined in sec-
23 tion 101 of the Congressional Accountability
24 Act of 1995 (2 U.S.C. 1301) or section 401 of
25 title 3, United States Code; or

1 (D) an entity to which section 717(a) of
 2 the Civil Rights Act of 1964 (42 U.S.C. 2000e–
 3 16(a)) applies.

4 (4) EMPLOYMENT AGENCY.—The term “em-
 5 ployment agency” has the meaning given the term in
 6 section 701(c) of the Civil Rights Act of 1964 (42
 7 U.S.C. 2000e(c)).

8 (5) EMPLOYMENT OR AN EMPLOYMENT OPPOR-
 9 TUNITY.—Except as provided in section 510(a)(1),
 10 the term “employment or an employment oppor-
 11 tunity” includes job application procedures, referral
 12 for employment, hiring, advancement, discharge,
 13 compensation, job training, a term, condition, or
 14 privilege of union membership, or any other term,
 15 condition, or privilege of employment, but does not
 16 include the service of a volunteer for which the vol-
 17 unteer receives no compensation.

18 (6) LABOR ORGANIZATION.—The term “labor
 19 organization” has the meaning given the term in
 20 section 701(d) of the Civil Rights Act of 1964 (42
 21 U.S.C. 2000e(d)).

22 (7) PERSON.—The term “person” has the
 23 meaning given the term in section 701(a) of the
 24 Civil Rights Act of 1964 (42 U.S.C. 2000e(a)).

1 (8) RELIGIOUS ORGANIZATION.—The term “re-
2 ligious organization” means—

3 (A) a religious corporation, association, or
4 society; or

5 (B) a school, college, university, or other
6 educational institution or institution of learn-
7 ing, if—

8 (i) the institution is in whole or sub-
9 stantial part controlled, managed, owned,
10 or supported by a religion, religious cor-
11 poration, association, or society; or

12 (ii) the curriculum of the institution is
13 directed toward the propagation of a reli-
14 gion.

15 (9) SEXUAL ORIENTATION.—The term “sexual
16 orientation” means homosexuality, bisexuality, or
17 heterosexuality, whether the orientation is real or
18 perceived.

19 (10) STATE.—The term “State” has the mean-
20 ing given the term in section 701(i) of the Civil
21 Rights Act of 1964 (42 U.S.C. 2000e(i)).

22 **SEC. 504. DISCRIMINATION PROHIBITED.**

23 (a) EMPLOYER PRACTICES.—It shall be an unlawful
24 employment practice for an employer—

1 (1) to fail or refuse to hire or to discharge any
2 individual, or otherwise to discriminate against any
3 individual with respect to the compensation, terms,
4 conditions, or privileges of employment of the indi-
5 vidual, because of such individual's sexual orienta-
6 tion; or

7 (2) to limit, segregate, or classify the employees
8 or applicants for employment of the employer in any
9 way that would deprive or tend to deprive any indi-
10 vidual of employment opportunities or otherwise ad-
11 versely affect the status of the individual as an em-
12 ployee, because of such individual's sexual orienta-
13 tion.

14 (b) EMPLOYMENT AGENCY PRACTICES.—It shall be
15 an unlawful employment practice for an employment agen-
16 cy to fail or refuse to refer for employment, or otherwise
17 to discriminate against, any individual because of the sex-
18 ual orientation of the individual or to classify or refer for
19 employment any individual on the basis of the sexual ori-
20 entation of the individual.

21 (c) LABOR ORGANIZATION PRACTICES.—It shall be
22 an unlawful employment practice for a labor
23 organization—

1 (1) to exclude or to expel from its membership,
2 or otherwise to discriminate against, any individual
3 because of the sexual orientation of the individual;

4 (2) to limit, segregate, or classify its member-
5 ship or applicants for membership, or to classify or
6 fail or refuse to refer for employment any individual,
7 in any way that would deprive or tend to deprive any
8 individual of employment opportunities, or would
9 limit such employment opportunities or otherwise
10 adversely affect the status of the individual as an
11 employee or as an applicant for employment, be-
12 cause of such individual's sexual orientation; or

13 (3) to cause or attempt to cause an employer to
14 discriminate against an individual in violation of this
15 section.

16 (d) TRAINING PROGRAMS.—It shall be an unlawful
17 employment practice for any employer, labor organization,
18 or joint labor-management committee controlling appren-
19 ticeship or other training or retraining, including on-the-
20 job training programs, to discriminate against any indi-
21 vidual because of the sexual orientation of the individual
22 in admission to, or employment in, any program estab-
23 lished to provide apprenticeship or other training.

24 (e) ASSOCIATION.—An unlawful employment practice
25 described in any of subsections (a) through (d) shall be

1 considered to include an action described in that sub-
 2 section, taken against an individual based on the sexual
 3 orientation of a person with whom the individual associ-
 4 ates or has associated.

5 (f) DISPARATE IMPACT.—Notwithstanding any other
 6 provision of this title, the fact that an employment prac-
 7 tice has a disparate impact, as the term “disparate im-
 8 pact” is used in section 703(k) of the Civil Rights Act
 9 of 1964 (42 U.S.C. 2000e-2(k)), on the basis of sexual
 10 orientation does not establish a prima facie violation of
 11 this title.

12 **SEC. 505. RETALIATION AND COERCION PROHIBITED.**

13 (a) RETALIATION.—A covered entity shall not dis-
 14 criminate against an individual because such individual
 15 opposed any act or practice prohibited by this title or be-
 16 cause such individual made a charge, assisted, testified,
 17 or participated in any manner in an investigation, pro-
 18 ceeding, or hearing under this title.

19 (b) COERCION.—A person shall not coerce, intimi-
 20 date, threaten, or interfere with any individual in the exer-
 21 cise or enjoyment of, or on account of such individual’s
 22 having exercised, enjoyed, or assisted in or encouraged the
 23 exercise or enjoyment of, any right granted or protected
 24 by this title.

1 **SEC. 506. BENEFITS.**

2 This title does not apply to the provision of employee
3 benefits to an individual for the benefit of the domestic
4 partner of such individual.

5 **SEC. 507. COLLECTION OF STATISTICS PROHIBITED.**

6 The Commission shall not collect statistics on sexual
7 orientation from covered entities, or compel the collection
8 of such statistics by covered entities.

9 **SEC. 508. QUOTAS AND PREFERENTIAL TREATMENT PRO-**
10 **HIBITED.**

11 (a) QUOTAS.—A covered entity shall not adopt or im-
12 plement a quota on the basis of sexual orientation.

13 (b) PREFERENTIAL TREATMENT.—A covered entity
14 shall not give preferential treatment to an individual on
15 the basis of sexual orientation.

16 (c) ORDERS AND CONSENT DECREES.—Notwith-
17 standing any other provision of this title, an order or con-
18 sent decree entered for a violation of this title may not
19 include a quota, or preferential treatment to an individual,
20 based on sexual orientation.

21 **SEC. 509. RELIGIOUS EXEMPTION.**

22 (a) IN GENERAL.—Except as provided in subsection
23 (b), this title shall not apply to a religious organization.

24 (b) UNRELATED BUSINESS TAXABLE INCOME.—This
25 title shall apply to employment or an employment oppor-
26 tunity for an employment position of a covered entity that

1 is a religious organization if the duties of the position per-
 2 tain solely to activities of the organization that generate
 3 unrelated business taxable income subject to taxation
 4 under section 511(a) of the Internal Revenue Code of
 5 1986.

6 **SEC. 510. NONAPPLICATION TO MEMBERS OF THE ARMED**
 7 **FORCES; VETERANS' PREFERENCES.**

8 (a) ARMED FORCES.—

9 (1) EMPLOYMENT OR AN EMPLOYMENT OPPOR-
 10 TUNITY.—In this title, the term “employment or an
 11 employment opportunity” does not apply to the rela-
 12 tionship between the United States and members of
 13 the Armed Forces.

14 (2) ARMED FORCES.—In paragraph (1), the
 15 term “Armed Forces” means the Army, Navy, Air
 16 Force, Marine Corps, and Coast Guard.

17 (b) VETERANS' PREFERENCES.—This title does not
 18 repeal or modify any Federal, State, territorial, or local
 19 law creating a special right or preference concerning em-
 20 ployment or an employment opportunity for a veteran.

21 **SEC. 511. CONSTRUCTION.**

22 Nothing in this title shall be construed to prohibit
 23 a covered entity from enforcing rules regarding nonprivate
 24 sexual conduct, if the rules of conduct are designed for,

1 and uniformly applied to, all individuals regardless of sex-
 2 ual orientation.

3 **SEC. 512. ENFORCEMENT.**

4 (a) ENFORCEMENT POWERS.—With respect to the
 5 administration and enforcement of this title in the case
 6 of a claim alleged by an individual for a violation of this
 7 title—

8 (1) the Commission shall have the same powers
 9 as the Commission has to administer and enforce—

10 (A) title VII of the Civil Rights Act of
 11 1964 (42 U.S.C. 2000e et seq.); or

12 (B) sections 302 and 304 of the Govern-
 13 ment Employee Rights Act of 1991 (2 U.S.C.
 14 1202 and 1220);

15 in the case of a claim alleged by such individual for
 16 a violation of such title, or of section 302(a)(1) of
 17 the Government Employee Rights Act of 1991 (2
 18 U.S.C. 1202(a)(1)), respectively;

19 (2) the Librarian of Congress shall have the
 20 same powers as the Librarian of Congress has to ad-
 21 minister and enforce title VII of the Civil Rights Act
 22 of 1964 (42 U.S.C. 2000e et seq.) in the case of a
 23 claim alleged by such individual for a violation of
 24 such title;

1 (3) the Board (as defined in section 101 of the
2 Congressional Accountability Act of 1995 (2 U.S.C.
3 1301)) shall have the same powers as the Board has
4 to administer and enforce the Congressional Ac-
5 countability Act of 1995 (2 U.S.C. 1301 et seq.) in
6 the case of a claim alleged by such individual for a
7 violation of section 201(a)(1) of such Act (2 U.S.C.
8 1311(a)(1));

9 (4) the Attorney General shall have the same
10 powers as the Attorney General has to administer
11 and enforce—

12 (A) title VII of the Civil Rights Act of
13 1964 (42 U.S.C. 2000e et seq.); or

14 (B) sections 302 and 304 of the Govern-
15 ment Employee Rights Act of 1991 (2 U.S.C.
16 1202 and 1220);

17 in the case of a claim alleged by such individual for
18 a violation of such title, or of section 302(a)(1) of
19 the Government Employee Rights Act of 1991 (2
20 U.S.C. 1202(a)(1)), respectively;

21 (5) the President, the Commission, and the
22 Merit Systems Protection Board shall have the same
23 powers as the President, the Commission, and the
24 Board, respectively, have to administer and enforce
25 chapter 5 of title 3, United States Code, in the case

1 of a claim alleged by such individual for a violation
2 of section 411 of such title;

3 (6) a court of the United States shall have the
4 same jurisdiction and powers as the court has to
5 enforce—

6 (A) title VII of the Civil Rights Act of
7 1964 (42 U.S.C. 2000e et seq.) in the case of
8 a claim alleged by such individual for a viola-
9 tion of such title;

10 (B) sections 302 and 304 of the Govern-
11 ment Employee Rights Act of 1991 (2 U.S.C.
12 1202 and 1220) in the case of a claim alleged
13 by such individual for a violation of section
14 302(a)(1) of such Act (2 U.S.C. 1202(a)(1));

15 (C) the Congressional Accountability Act
16 of 1995 (2 U.S.C. 1301 et seq.) in the case of
17 a claim alleged by such individual for a viola-
18 tion of section 201(a)(1) of such Act (2 U.S.C.
19 1311(a)(1)); and

20 (D) chapter 5 of title 3, United States
21 Code, in the case of a claim alleged by such in-
22 dividual for a violation of section 411 of such
23 title.

1 (b) PROCEDURES AND REMEDIES.—The procedures
2 and remedies applicable to a claim alleged by an individual
3 for a violation of this title are—

4 (1) the procedures and remedies applicable for
5 a violation of title VII of the Civil Rights Act of
6 1964 (42 U.S.C. 2000e et seq.) in the case of a
7 claim alleged by such individual for a violation of
8 such title;

9 (2) the procedures and remedies applicable for
10 a violation of section 302(a)(1) of the Government
11 Employee Rights Act of 1991 (2 U.S.C. 1202(a)(1))
12 in the case of a claim alleged by such individual for
13 a violation of such section;

14 (3) the procedures and remedies applicable for
15 a violation of section 201(a)(1) of the Congressional
16 Accountability Act of 1995 (2 U.S.C. 1311(a)(1)) in
17 the case of a claim alleged by such individual for a
18 violation of such section; and

19 (4) the procedures and remedies applicable for
20 a violation of section 411 of title 3, United States
21 Code, in the case of a claim alleged by such indi-
22 vidual for a violation of such section.

23 (c) OTHER APPLICABLE PROVISIONS.—With respect
24 to a claim alleged by a covered employee (as defined in
25 section 101 of the Congressional Accountability Act of

1 1995 (2 U.S.C. 1301)) for a violation of this title, title
 2 III of the Congressional Accountability Act of 1995 (2
 3 U.S.C. 1381 et seq.) shall apply in the same manner as
 4 such title applies with respect to a claim alleged by such
 5 a covered employee for a violation of section 201(a)(1) of
 6 such Act (2 U.S.C. 1311(a)(1)).

7 (d) PROHIBITION OF AFFIRMATIVE ACTION—Not-
 8 withstanding any other provision of this section, affirma-
 9 tive action for a violation of this title may not be imposed.
 10 Nothing in this section shall prevent the granting of relief
 11 to any individual who suffers a violation of such individ-
 12 ual's rights provided in this title.

13 **SEC. 513. STATE AND FEDERAL IMMUNITY.**

14 (a) STATE IMMUNITY.—A State shall not be immune
 15 under the 11th amendment to the Constitution from an
 16 action in a Federal court of competent jurisdiction for a
 17 violation of this title.

18 (b) REMEDIES AGAINST THE UNITED STATES AND
 19 THE STATES.—Notwithstanding any other provision of
 20 this title, in an action or administrative proceeding against
 21 the United States or a State for a violation of this title,
 22 remedies (including remedies at law and in equity, and
 23 interest) are available for the violation to the same extent
 24 as the remedies are available for a violation of title VII

1 of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.)

2 by a private entity, except that—

3 (1) punitive damages are not available; and

4 (2) compensatory damages are available to the

5 extent specified in section 1977A(b) of the Revised

6 Statutes (42 U.S.C. 1981a(b)).

7 **SEC. 514. ATTORNEYS' FEES.**

8 Notwithstanding any other provision of this title, in
9 an action or administrative proceeding for a violation of
10 this title, an entity described in section 512(a) (other than
11 paragraph (4) of such section), in the discretion of the
12 entity, may allow the prevailing party, other than the
13 Commission or the United States, a reasonable attorney's
14 fee (including expert fees) as part of the costs. The Com-
15 mission and the United States shall be liable for the costs
16 to the same extent as a private person.

17 **SEC. 515. POSTING NOTICES.**

18 A covered entity who is required to post notices de-
19 scribed in section 711 of the Civil Rights Act of 1964 (42
20 U.S.C. 2000e–10) shall post notices for employees, appli-
21 cants for employment, and members, to whom the provi-
22 sions specified in section 512(b) apply, that describe the
23 applicable provisions of this title in the manner prescribed
24 by, and subject to the penalty provided under, section 711
25 of the Civil Rights Act of 1964.

1 **SEC. 516. REGULATIONS.**

2 (a) IN GENERAL.—Except as provided in subsections
3 (b), (c), and (d), the Commission shall have authority to
4 issue regulations to carry out this title.

5 (b) LIBRARIAN OF CONGRESS.—The Librarian of
6 Congress shall have authority to issue regulations to carry
7 out this title with respect to employees of the Library of
8 Congress.

9 (c) BOARD.—The Board referred to in section
10 512(a)(3) shall have authority to issue regulations to carry
11 out this title, in accordance with section 304 of the Con-
12 gressional Accountability Act of 1995 (2 U.S.C. 1384),
13 with respect to covered employees, as defined in section
14 101 of such Act (2 U.S.C. 1301).

15 (d) PRESIDENT.—The President shall have authority
16 to issue regulations to carry out this title with respect to
17 covered employees, as defined in section 401 of title 3,
18 United States Code.

19 **SEC. 517. RELATIONSHIP TO OTHER LAWS.**

20 This title shall not invalidate or limit the rights, rem-
21 edies, or procedures available to an individual claiming
22 discrimination prohibited under any other Federal law or
23 any law of a State or political subdivision of a State.

24 **SEC. 518. SEVERABILITY.**

25 If any provision of this title, or the application of the
26 provision to any person or circumstance, is held to be in-

1 valid, the remainder of this title and the application of
 2 the provision to any other person or circumstance shall
 3 not be affected by the invalidity.

4 **SEC. 519. EFFECTIVE DATE.**

5 This title shall take effect 60 days after the date of
 6 enactment of this Act and shall not apply to conduct oc-
 7 ccurring before the effective date.

8 **TITLE VI—PROMOTING CIVIL**
 9 **RIGHTS ENFORCEMENT**

10 **SEC. 601. ESTABLISHMENT OF THE NATIONAL TASK FORCE**
 11 **ON VIOLENCE AGAINST HEALTH CARE PRO-**
 12 **VIDERS.**

13 (a) ESTABLISHMENT.—There is established in the
 14 Department of Justice a National Task Force on Violence
 15 Against Health Care Providers (referred to in this section
 16 as the “task force”).

17 (b) COMPOSITION.—The task force shall be composed
 18 on one or more individuals from—

- 19 (1) the Department of Justice;
- 20 (2) the Federal Bureau of Investigation;
- 21 (3) the United States Marshals Service;
- 22 (4) the Bureau of Alcohol, Tobacco, and Fire-
- 23 arms; and
- 24 (5) the United States Postal Inspection Service.

1 (c) CHAIRMAN.—The task force shall be chaired by
2 the Assistant Attorney General for Civil Rights.

3 (d) POWERS AND DUTIES.—The task force shall—

4 (1) coordinate the national investigation and
5 prosecution of incidents of violence and other unlaw-
6 ful acts directed against reproductive health care
7 providers, with a focus on connections that may
8 exist between individuals involved in such unlawful
9 activity;

10 (2) serve as a clearinghouse of information, for
11 use by investigators and prosecutors, relating to acts
12 of violence against reproductive health care pro-
13 viders;

14 (3) make available security information and rec-
15 ommendations to enhance the safety and protection
16 of reproductive health care providers;

17 (4) provide training to Federal, State, and local
18 law enforcement on issues relating to clinic violence;
19 and

20 (5) support Federal civil investigation and liti-
21 gation of violence and other unlawful acts directed
22 at reproductive health care providers.

23 (e) AUTHORIZATION OF APPROPRIATIONS.—There
24 are authorized to be appropriated \$1,000,000 for each fis-
25 cal year to carry out this section.

1 **SEC. 602. INCREASE IN FUNDING FOR ENFORCING CIVIL**
2 **RIGHTS LAWS.**

3 (a) INCREASE IN FUNDING.—There are authorized to
4 be appropriated for fiscal year 2002 for each of the agen-
5 cies described in subsection (b) an amount equal to 105
6 percent of the amount appropriated for fiscal year 2001.

7 (b) AGENCIES.—The agencies referred to in sub-
8 section (a) (with the increase and total amount authorized
9 for fiscal year 2002) are as follows:

10 (1) Equal Employment Opportunity Commis-
11 sion (an increase of \$15,200,000 from fiscal year
12 2001 to \$319,200,000 for fiscal year 2002).

13 (2) Department of Justice: Civil Rights Divi-
14 sion (an increase of \$4,600,000 from fiscal year
15 2001 to \$96,600,000 for fiscal year 2002).

16 (3) Education: Office of Civil Rights (an in-
17 crease of \$3,800,000 from fiscal year 2001 to
18 \$79,800,000 for fiscal year 2002).

19 (4) Department of Labor: Office of Federal
20 Contract Compliance (an increase of \$3,800,000
21 from fiscal year 2001 to \$79,800,000 for fiscal year
22 2002).

23 (5) Department of Labor: Civil Rights Center
24 (an increase of \$300,000 from fiscal year 2001 to
25 \$6,300,000 for fiscal year 2002).

1 (6) Housing and Urban Development: Fair
2 Housing Activities Grants (an increase of
3 \$2,300,000 from fiscal year 2001 to \$48,300,000
4 for fiscal year 2002).

5 (7) Health and Human Services: Office for Civil
6 Rights (an increase of \$1,400,000 from fiscal year
7 2001 to \$29,400,000 for fiscal year 2002).

8 (8) Agriculture: Civil Rights Programs (an in-
9 crease of \$1,000,000 from fiscal year 2001 to
10 \$21,000,000 for fiscal year 2002).

11 (9) Transportation: Office of Civil Rights (an
12 increase of \$400,000 from fiscal year 2001 to
13 \$8,400,000 for fiscal year 2002).

14 (10) Environmental Protection Agency: Office
15 of Civil Rights (an increase of \$250,000 from fiscal
16 year 2001 to \$5,250,000 for fiscal year 2002).

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