get them correct if we are going to have those interventions in the Senate.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ENZI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

GENETIC INFORMATION NONDISCRIMINATION ACT OF 2005

Mr. ENZI. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 3, S. 306, the Genetic Information Nondiscrimination Act of 2005; provided that there be 90 minutes of debate equally divided between the chairman and ranking member of the HELP committee; provided further that the only amendment in order, other than the committee-reported amendment, be a substitute which is at the desk, and following the use or yielding back of time the substitute amendment be agreed to, the committee-reported amendment, as amended, be agreed to, the bill, as amended, be read a third time, and the Senate proceed to a vote on passage without any intervening action or debate at a time determined by the majority leader, after consultation with the Democratic leader.

The PRESIDING OFFICER. Is there any objection? Without objection, it is so ordered.

The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 306) to prohibit discrimination on the basis of genetic information with respect to health insurance and employment.

The Senate proceeded to consider the bill which had been reported from the Committee on Health, Education, Labor, and Pensions with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

[Strike the part shown in black brackets and insert the part shown in italic.]

S. 306

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

[SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

[(a) Short Title.—This Act may be cited as the ''Genetic Information Nondiscrimination Act of 2005''.

[(b) Table of Contents.—The table of contents of this Act is as follows:

[Sec. 1. Short title; table of contents.
[Sec. 2. Findings.

[TITLE I—GENETIC NONDISCRIMINATION IN HEALTH INSURANCE

[Sec. 101. Amendments to Employee Retirement Income Security Act of 1974.
[Sec. 102. Amendments to the Public Health Service Act.
[Sec. 103. Amendments to the Internal Revenue Code of 1986.
[Sec. 104. Amendments to title XVIII of the Social Security Act relating to medigap.
[Sec. 105. Privacy and confidentiality.
[Sec. 106. Assuring coordination.
[Sec. 107. Regulations; effective date.

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

[Sec. 201. Definitions.
[Sec. 202. Employer practices.
[Sec. 203. Employment agency practices.
[Sec. 204. Labor organization practices.
[Sec. 205. Training programs.
[Sec. 206. Confidentiality of genetic information.
[Sec. 207. Remedies and enforcement.
[Sec. 208. Disparate impact.
[Sec. 209. Construction.
[Sec. 210. Medical information that is not genetic information.
[Sec. 211. Regulations.
[Sec. 212. Authorization of appropriations.
[Sec. 213. Effective date.

[TITLE III—MISCELLANEOUS PROVISION

[Sec. 301. Severability.

[SEC. 2. FINDINGS.

[Congress makes the following findings:

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

[(2) The early science of genetics became the basis of State laws that provided for the sterilization of persons having presumed genetic ''defects'' such as mental retardation, mental disease, epilepsy, blindness, and hearing loss, among other conditions. The first sterilization law was enacted in the State of Indiana in 1907. By 1981, a majority of States adopted sterilization laws to ''correct'' apparent genetic traits or tendencies. Many of these State laws have since been repealed, and many have been modified to include essential constitutional requirements of due process and equal protection. However, the current explosion in the science of genetics, and the history of sterilization laws by the States based on early genetic science, compels Congressional action in this area.

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

[(4) Congress has been informed of examples of genetic discrimination in the workplace. These include the use of pre-employment genetic screening at Lawrence Berkeley Laboratory, which led to a court decision in favor of the employees in that case *Norman-Bloodsaw v. Lawrence Berkeley Laboratory* (135 F.3d 1260, 1269 (9th Cir. 1998)). Congress clearly has a compelling public interest in relieving the fear of discrimination and in prohibiting its actual practice in employment and health insurance.

[(5) Federal law addressing genetic discrimination in health insurance and employment is incomplete in both the scope and depth of its protections. Moreover, while many States have enacted some type of genetic non-discrimination law, these laws vary widely with respect to their approach, application, and level of protection. Congress has collected substantial evidence that the American public and the medical community find the existing patchwork of State and Federal laws to be confusing and inadequate to protect them from discrimination. Therefore Federal legislation establishing a national and uniform basic standard is necessary to fully protect the public from discrimination and allay their concerns about the potential for discrimination, thereby allowing individuals to take advantage of genetic testing, technologies, research, and new therapies.

[TITLE I—GENETIC NONDISCRIMINATION IN HEALTH INSURANCE

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

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

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

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

[(A) in paragraph (2)(A), by inserting before the semicolon the following: ''except as provided in paragraph (3)''; and

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

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

[(b) Limitations on Genetic Testing.—Section 702 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1182) is amended by adding at the end the following:

[''(c) Genetic Testing.—

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

[‘‘(2) Rule of construction.—Nothing in this part shall be construed to—

[‘‘(A) limit the authority of a health care professional who is providing health care services with respect to an individual to request that such individual or a family member of such individual undergo a genetic test;

[‘‘(B) limit the authority of a health care professional who is employed by or affiliated with a group health plan or a health insurance issuer and who is providing health care services to an individual as part of a bona fide wellness program to notify such individual of the availability of a genetic test or to provide information to such individual regarding such genetic test; or

[‘‘(C) authorize or permit a health care professional to require that an individual undergo a genetic test.

[‘‘(d) Application to All Plans.—The provisions of subsections (a)(1)(F), (b)(3), and (c) shall apply to group health plans and health insurance issuers without regard to section 732(a).’’.

[(c) Remedies and Enforcement.—Section 502 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132) is amended by adding at the end the following:

[‘‘(n) Enforcement of Genetic Nondiscrimination Requirements.—

[‘‘(1) Injunctive relief for irreparable harm.—With respect to any violation of subsection (a)(1)(F), (b)(3), or (c) of section 702, a participant or beneficiary may seek relief under subsection 502(a)(1)(B) prior to the exhaustion of available administrative remedies under section 503 if it is demonstrated to the court, by a preponderance of the evidence, that the exhaustion of such remedies would cause irreparable harm to the health of the participant or beneficiary. Any determinations that already have been made under section 503 in such case, or that are made in such case while an action under this paragraph is pending, shall be given due consideration by the court in any action under this subsection in such case.

[‘‘(2) Equitable relief for genetic nondiscrimination.—

[‘‘(A) Reinstatement of benefits where equitable relief has been awarded.—The recovery of benefits by a participant or beneficiary under a civil action under this section may include an administrative penalty under subparagraph (B) and the retroactive reinstatement of coverage under the plan involved to the date on which the participant or beneficiary was denied eligibility for coverage if—

[‘‘(i) the civil action was commenced under subsection (a)(1)(B); and

[‘‘(ii) the denial of coverage on which such civil action was based constitutes a violation of subsection (a)(1)(F), (b)(3), or (c) of section 702.

[‘‘(B) Administrative penalty.—

[‘‘(i) In general.—An administrator who fails to comply with the requirements of subsection (a)(1)(F), (b)(3), or (c) of section 702 with respect to a participant or beneficiary may, in an action commenced under subsection (a)(1)(B), be personally liable in the discretion of the court, for a penalty in the amount not more than $100 for each day in the noncompliance period.

[‘‘(ii) Noncompliance period.—For purposes of clause (i), the term ‘noncompliance period’ means the period—

[‘‘(I) beginning on the date that a failure described in clause (i) occurs; and

[‘‘(II) ending on the date that such failure is corrected.

[‘‘(iii) Payment to participant or beneficiary.—A penalty collected under this subparagraph shall be paid to the participant or beneficiary involved.

[‘‘(3) Secretarial enforcement authority.—

[‘‘(A) General rule.—The Secretary has the authority to impose a penalty on any failure of a group health plan to meet the requirements of subsection (a)(1)(F), (b)(3), or (c) of section 702.

[‘‘(B) Amount.—

[‘‘(i) In general.—The amount of the penalty imposed by subparagraph (A) shall be $100 for each day in the noncompliance period with respect to each individual to whom such failure relates.

[‘‘(ii) Noncompliance period.—For purposes of this paragraph, the term ‘noncompliance period’ means, with respect to any failure, the period—

[‘‘(I) beginning on the date such failure first occurs; and

[‘‘(II) ending on the date such failure is corrected.

[‘‘(C) Minimum penalties where failure discovered.—Notwithstanding clauses (i) and (ii) of subparagraph (D):

[‘‘(i) In general.—In the case of 1 or more failures with respect to an individual—

[‘‘(I) which are not corrected before the date on which the plan receives a notice from the Secretary of such violation; and

[‘‘(II) which occurred or continued during the period involved;

the amount of penalty imposed by subparagraph (A) by reason of such failures with respect to such individual shall not be less than $2,500.

[‘‘(ii) Higher minimum penalty where violations are more than de minimis.—To the extent violations for which any person is liable under this paragraph for any year are more than de minimis, clause (i) shall be applied by substituting ‘$15,000’ for ‘$2,500’ with respect to such person.

[‘‘(D) Limitations.—

[‘‘(i) Penalty not to apply where failure not discovered exercising reasonable diligence.—No penalty shall be imposed by subparagraph (A) on any failure during any period for which it is established to the satisfaction of the Secretary that the person otherwise liable for such penalty did not know, and exercising reasonable diligence would not have known, that such failure existed.

[‘‘(ii) Penalty not to apply to failures corrected within certain periods.—No penalty shall be imposed by subparagraph (A) on any failure if—

[‘‘(I) such failure was due to reasonable cause and not to willful neglect; and

[‘‘(II) such failure is corrected during the 30-day period beginning on the first date the person otherwise liable for such penalty knew, or exercising reasonable diligence would have known, that such failure existed.

[‘‘(iii) Overall limitation for unintentional failures.—In the case of failures which are due to reasonable cause and not to willful neglect, the penalty imposed by subparagraph (A) for failures shall not exceed the amount equal to the lesser of—

[‘‘(I) 10 percent of the aggregate amount paid or incurred by the employer (or predecessor employer) during the preceding taxable year for group health plans; or

[‘‘(II) $500,000.

[‘‘(E) Waiver by secretary.—In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the penalty imposed by subparagraph (A) to the extent that the payment of such penalty would be excessive relative to the failure involved.’’.

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

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

[‘‘(A) the spouse of the individual;

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

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

[‘‘(6) Genetic information.—

[‘‘(A) In general.—Except as provided in subparagraph (B), the term ‘genetic information’ means information about—

[‘‘(i) an individual’s genetic tests;

[‘‘(ii) the genetic tests of family members of the individual; or

[‘‘(iii) the occurrence of a disease or disorder in family members of the individual.

[‘‘(B) Exclusions.—The term ‘genetic information’ shall not include information about the sex or age of an individual.

[‘‘(7) Genetic test.—

[‘‘(A) In general.—The term ‘genetic test’ means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes.

[‘‘(B) Exceptions.—The term ‘genetic test’ does not mean—

[‘‘(i) an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or

[‘‘(ii) an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.

[‘‘(8) Genetic services.—The term ‘genetic services’ means—

[‘‘(A) a genetic test;

[‘‘(B) genetic counseling (such as obtaining, interpreting, or assessing genetic information); or

[‘‘(C) genetic education.’’.

[(e) Regulations and Effective Date.—

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

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

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

[(a) Amendments Relating to the Group Market.—

[(1) Prohibition of health discrimination on the basis of genetic information or genetic services.—

[(A) No enrollment restriction for genetic services.—Section 2702(a)(1)(F) of the Public Health Service Act (42 U.S.C. 300gg–1(a)(1)(F)) is amended by inserting before the period the following: ‘‘(including information about a request for or receipt of genetic services by an individual or family member of such individual)’’.

[(B) No discrimination in group premiums based on genetic information.—Section 2702(b) of the Public Health Service Act (42 U.S.C. 300gg–1(b)) is amended—

[(i) in paragraph (2)(A), by inserting before the semicolon the following: ‘‘, except as provided in paragraph (3)’’; and

[(ii) by adding at the end the following:

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

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

[''(c) Genetic Testing.—

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

[''(2) Rule of construction.—Nothing in this part shall be construed to—

[''(A) limit the authority of a health care professional who is providing health care services with respect to an individual to request that such individual or a family member of such individual undergo a genetic test;

[''(B) limit the authority of a health care professional who is employed by or affiliated with a group health plan or a health insurance issuer and who is providing health care services to an individual as part of a bona fide wellness program to notify such individual of the availability of a genetic test or to provide information to such individual regarding such genetic test; or

[''(C) authorize or permit a health care professional to require that an individual undergo a genetic test.

[''(d) Application to All Plans.—The provisions of subsections (a)(1)(F), (b)(3), and (c) shall apply to group health plans and health insurance issuers without regard to section 2721(a).''.

[(3) Remedies and enforcement.—Section 2722(b) of the Public Health Service Act (42 U.S.C. 300gg–22)(b)) is amended by adding at the end the following:

[''(3) Enforcement authority relating to genetic discrimination.—

[''(A) General rule.—In the cases described in paragraph (1), notwithstanding the provisions of paragraph (2)(C), the following provisions shall apply with respect to an action under this subsection by the Secretary with respect to any failure of a health insurance issuer in connection with a group health plan, to meet the requirements of subsection (a)(1)(F), (b)(3), or (c) of section 2702.

[''(B) Amount.—

[''(i) In general.—The amount of the penalty imposed under this paragraph shall be $100 for each day in the noncompliance period with respect to each individual to whom such failure relates.

[''(ii) Noncompliance period.—For purposes of this paragraph, the term 'noncompliance period' means, with respect to any failure, the period—

[''(I) beginning on the date such failure first occurs; and

[''(II) ending on the date such failure is corrected.

[''(C) Minimum penalties where failure discovered.—Notwithstanding clauses (i) and (ii) of subparagraph (D):

[''(i) In general.—In the case of 1 or more failures with respect to an individual—

[''(I) which are not corrected before the date on which the plan receives a notice from the Secretary of such violation; and

[''(II) which occurred or continued during the period involved;

the amount of penalty imposed by subparagraph (A) by reason of such failures with respect to such individual shall not be less than $2,500.

[''(ii) Higher minimum penalty where violations are more than de minimis.—To the extent violations for which any person is liable under this paragraph for any year are more than de minimis, clause (i) shall be applied by substituting '$15,000' for '$2,500' with respect to such person.

[''(D) Limitations.—

[''(i) Penalty not to apply where failure not discovered exercising reasonable diligence.—No penalty shall be imposed by subparagraph (A) on any failure during any period for which it is established to the satisfaction of the Secretary that the person otherwise liable for such penalty did not know, and exercising reasonable diligence would not have known, that such failure existed.

[''(ii) Penalty not to apply to failures corrected within certain periods.—No penalty shall be imposed by subparagraph (A) on any failure if—

[''(I) such failure was due to reasonable cause and not to willful neglect; and

[''(II) such failure is corrected during the 30-day period beginning on the first date the person otherwise liable for such penalty knew, or exercising reasonable diligence would have known, that such failure existed.

[''(iii) Overall limitation for unintentional failures.—In the case of failures which are due to reasonable cause and not to willful neglect, the penalty imposed by subparagraph (A) for failures shall not exceed the amount equal to the lesser of—

[''(I) 10 percent of the aggregate amount paid or incurred by the employer (or predecessor employer) during the preceding taxable year for group health plans; or

[''(II) $500,000.

[''(E) Waiver by secretary.—In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the penalty imposed by subparagraph (A) to the extent that the payment of such penalty would be excessive relative to the failure involved.''.

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

[''(15) Family member.—The term 'family member' means with respect to an individual—

[''(A) the spouse of the individual;

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

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

[''(16) Genetic information.—

[''(A) In general.—Except as provided in subparagraph (B), the term 'genetic information' means information about—

[''(i) an individual's genetic tests;

[''(ii) the genetic tests of family members of the individual; or

[''(iii) the occurrence of a disease or disorder in family members of the individual.

[''(B) Exclusions.—The term 'genetic information' shall not include information about the sex or age of an individual.

[''(17) Genetic test.—

[''(A) In general.—The term 'genetic test' means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes.

[''(B) Exceptions.—The term 'genetic test' does not mean—

[''(i) an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or

[''(ii) an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.

[''(18) Genetic services.—The term 'genetic services' means—

[''(A) a genetic test;

[''(B) genetic counseling (such as obtaining, interpreting, or assessing genetic information); or

[''(C) genetic education.''.

[(b) Amendment Relating to the Individual Market.—

[(1) In general.—The first subpart 3 of part B of title XXVII of the Public Health Service Act (42 U.S.C. 300gg–51 et seq.) (relating to other requirements) is amended—

[(A) by redesignating such subpart as subpart 2; and

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

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

[''(a) Prohibition on Genetic Information as a Condition of Eligibility.—A health insurance issuer offering health insurance coverage in the individual market may not establish rules for the eligibility (including continued eligibility) of any individual to enroll in individual health insurance coverage based on genetic information (including information about a request for or receipt of genetic services by an individual or family member of such individual).

[''(b) Prohibition on Genetic Information in Setting Premium Rates.—A health insurance issuer offering health insurance coverage in the individual market shall not adjust premium or contribution amounts for an individual on the basis of genetic information concerning the individual or a family member of the individual (including information about a request for or receipt of genetic services by an individual or family member of such individual).

[''(c) Genetic Testing.—

[''(1) Limitation on requesting or requiring genetic testing.—A health insurance issuer offering health insurance coverage in the individual market shall not request or require an individual or a family member of such individual to undergo a genetic test.

[''(2) Rule of construction.—Nothing in this part shall be construed to—

[''(A) limit the authority of a health care professional who is providing health care services with respect to an individual to request that such individual or a family member of such individual undergo a genetic test;

[''(B) limit the authority of a health care professional who is employed by or affiliated with a health insurance issuer and who is providing health care services to an individual as part of a bona fide wellness program to notify such individual of the availability of a genetic test or to provide information to such individual regarding such genetic test; or

[''(C) authorize or permit a health care professional to require that an individual undergo a genetic test.''.

[(2) Remedies and enforcement.—Section 2761(b) of the Public Health Service Act (42 U.S.C. 300gg–61)(b)) is amended to read as follows:

[''(b) Secretarial Enforcement Authority.—The Secretary shall have the same authority in relation to enforcement of the provisions of this part with respect to issuers of health insurance coverage in the individual market in a State as the Secretary has under section 2722(b)(2), and section 2722(b)(3) with respect to violations of genetic nondiscrimination provisions, in relation to the enforcement of the provisions of part A with respect to issuers of health insurance coverage in the small group market in the State.''.

[(c) Elimination of Option of Non-Federal Governmental Plans to Be Excepted From Requirements Concerning Genetic Information.—Section 2721(b)(2) of the Public

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

[(1) in subparagraph (A), by striking ‘‘If the plan sponsor’’ and inserting ‘‘Except as provided in subparagraph (D), if the plan sponsor’’; and

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

[‘‘(D) Election not applicable to requirements concerning genetic information.—The election described in subparagraph (A) shall not be available with respect to the provisions of subsections (a)(1)(F) and (c) of section 2702 and the provisions of section 2702(b) to the extent that such provisions apply to genetic information (or information about a request for or the receipt of genetic services by an individual or a family member of such individual).’’.

[(d) Regulations and Effective Date.—

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

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

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

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

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

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

[(1) No enrollment restriction for genetic services.—Section 9802(a)(1)(F) of the Internal Revenue Code of 1986 is amended by inserting before the period the following: ‘‘(including information about a request for or receipt of genetic services by an individual or family member of such individual)’’.

[(2) No discrimination in group premiums based on genetic information.—Section 9802(b) of the Internal Revenue Code of 1986 is amended—

[(A) in paragraph (2)(A), by inserting before the semicolon the following: ‘‘, except as provided in paragraph (3)’’; and

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

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

[(b) Limitations on Genetic Testing.—Section 9802 of the Internal Revenue Code of 1986 is amended by adding at the end the following:

[‘‘(d) Genetic Testing and Genetic Services.—

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

[‘‘(2) Rule of construction.—Nothing in this part shall be construed to—

[‘‘(A) limit the authority of a health care professional who is providing health care services with respect to an individual to request that such individual or a family member of such individual undergo a genetic test;

[‘‘(B) limit the authority of a health care professional who is employed by or affiliated with a group health plan and who is providing health care services to an individual as part of a bona fide wellness program to notify such individual of the availability of a genetic test or to provide information to such individual regarding such genetic test; or

[‘‘(C) authorize or permit a health care professional to require that an individual undergo a genetic test.

[‘‘(e) Application to All Plans.—The provisions of subsections (a)(1)(F), (b)(3), and (d) shall apply to group health plans and health insurance issuers without regard to section 9831(a)(2).’’.

[(c) Definitions.—Section 9832(d) of the Internal Revenue Code of 1986 is amended by adding at the end the following:

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

[‘‘(A) the spouse of the individual;

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

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

[‘‘(7) Genetic services.—The term ‘genetic services’ means—

[‘‘(A) a genetic test;

[‘‘(B) genetic counseling (such as obtaining, interpreting, or assessing genetic information); or

[‘‘(C) genetic education.

[‘‘(8) Genetic information.—

[‘‘(A) In general.—Except as provided in subparagraph (B), the term ‘genetic information’ means information about—

[‘‘(i) an individual’s genetic tests;

[‘‘(ii) the genetic tests of family members of the individual; or

[‘‘(iii) the occurrence of a disease or disorder in family members of the individual.

[‘‘(B) Exclusions.—The term ‘genetic information’ shall not include information about the sex or age of an individual.

[‘‘(9) Genetic test.—

[‘‘(A) In general.—The term ‘genetic test’ means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes.

[‘‘(B) Exceptions.—The term ‘genetic test’ does not mean—

[‘‘(i) an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or

[‘‘(ii) an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.’’.

[(d) Regulations and Effective Date.—

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

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

[SEC. 104. 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 genetic information concerning the individual (or information about a request for, or the receipt of, genetic services by such individual or family member of such individual).

[‘‘(ii) For purposes of clause (i), the terms ‘family member’, ‘genetic services’, and ‘genetic information’ shall have the meanings given such terms in subsection (v).’’.

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

[(b) Limitations on Genetic Testing.—

[(1) In general.—Section 1882 of the Social Security Act (42 U.S.C. 1395ss) is amended by adding at the end the following:

[‘‘(v) Limitations on Genetic Testing.—

[‘‘(1) Genetic testing.—

[‘‘(A) Limitation on requesting or requiring genetic testing.—An issuer of a medicare supplemental policy shall not request or require an individual or a family member of such individual to undergo a genetic test.

[‘‘(B) Rule of construction.—Nothing in this title shall be construed to—

[‘‘(i) limit the authority of a health care professional who is providing health care services with respect to an individual to request that such individual or a family member of such individual undergo a genetic test;

[‘‘(ii) limit the authority of a health care professional who is employed by or affiliated with an issuer of a medicare supplemental policy and who is providing health care services to an individual as part of a bona fide wellness program to notify such individual of the availability of a genetic test or to provide information to such individual regarding such genetic test; or

[‘‘(iii) authorize or permit a health care professional to require that an individual undergo a genetic test.

[‘‘(2) Definitions.—In this subsection:

[‘‘(A) 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).

[‘‘(B) Genetic information.—

[‘‘(i) In general.—Except as provided in clause (ii), the term ‘genetic information’ means information about—

[‘‘(I) an individual’s genetic tests;

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

[‘‘(III) the occurrence of a disease or disorder in family members of the individual.

[‘‘(ii) Exclusions.—The term ‘genetic information’ shall not include information about the sex or age of an individual.

[‘‘(C) Genetic test.—

[‘‘(i) In general.—The term ‘genetic test’ means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes.

[‘‘(ii) Exceptions.—The term ‘genetic test’ does not mean—

[‘‘(I) an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or

[‘‘(II) an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.

[‘‘(D) GENETIC SERVICES.—The term ‘genetic services’ means—

[‘‘(i) a genetic test;

[‘‘(ii) genetic counseling (such as obtaining, interpreting, or assessing genetic information); or

[‘‘(iii) genetic education.

[‘‘(E) ISSUER OF A MEDICARE SUPPLEMENTAL POLICY.—The term ‘issuer of a medicare supplemental policy’ includes a third-party administrator or other person acting for or on behalf of such issuer.’’.

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

[‘‘(4) The issuer of the medicare supplemental policy complies with subsection (s)(2)(E) and subsection (v).’’.

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

[(c) TRANSITION PROVISIONS.—

[(1) IN GENERAL.—If the Secretary of Health and Human Services identifies a State as requiring a change to its statutes or regulations to conform its regulatory program to the changes made by this section, the State regulatory program shall not be considered to be out of compliance with the requirements of section 1882 of the Social Security Act due solely to failure to make such change until the date specified in paragraph (4).

[(2) NAIC STANDARDS.—If, not later than June 30, 2006, the National Association of Insurance Commissioners (in this subsection referred to as the ‘‘NAIC’’) modifies its NAIC Model Regulation relating to section 1882 of the Social Security Act (referred to in such section as the 1991 NAIC Model Regulation, as subsequently modified) to conform to the amendments made by this section, such revised regulation incorporating the modifications shall be considered to be the applicable NAIC model regulation (including the revised NAIC model regulation and the 1991 NAIC Model Regulation) for the purposes of such section.

[(3) SECRETARY STANDARDS.—If the NAIC does not make the modifications described in paragraph (2) within the period specified in such paragraph, the Secretary of Health and Human Services shall, not later than October 1, 2006, make the modifications described in such paragraph and such revised regulation incorporating the modifications shall be considered to be the appropriate regulation for the purposes of such section.

[(4) DATE SPECIFIED.—

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

[(i) the date the State changes its statutes or regulations to conform its regulatory program to the changes made by this section, or

[(ii) October 1, 2006.

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

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

[(ii) having a legislature which is not scheduled to meet in 2006 in a legislative session in which such legislation may be considered, the date specified in this paragraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after July 1, 2006. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

[SEC. 105. PRIVACY AND CONFIDENTIALITY.

[(a) APPLICABILITY.—Except as provided in subsection (d), the provisions of this section shall apply to group health plans, health insurance issuers (including issuers in connection with group health plans or individual health coverage), and issuers of medicare supplemental policies, without regard to—

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

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

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

[(b) COMPLIANCE WITH CERTAIN CONFIDENTIALITY STANDARDS WITH RESPECT TO GENETIC INFORMATION.—

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

[(2) PROHIBITION ON UNDERWRITING AND PREMIUM RATING.—Notwithstanding paragraph (1), a group health plan, a health insurance issuer, or issuer of a medicare supplemental policy shall not use or disclose genetic information (including information about a request for or a receipt of genetic services by an individual or family member of such individual) for purposes of underwriting, determinations of eligibility to enroll, premium rating, or the creation, renewal or replacement of a plan, contract or coverage for health insurance or health benefits.

[(c) PROHIBITION ON COLLECTION OF GENETIC INFORMATION.—

[(1) IN GENERAL.—A group health plan, health insurance issuer, or issuer of a medicare supplemental policy shall not request, require, or purchase genetic information (including information about a request for or a receipt of genetic services by an individual or family member of such individual) for purposes of underwriting, determinations of eligibility to enroll, premium rating, or the creation, renewal or replacement of a plan, contract or coverage for health insurance or health benefits.

[(2) LIMITATION RELATING TO THE COLLECTION OF GENETIC INFORMATION PRIOR TO ENROLLMENT.—A group health plan, health insurance issuer, or issuer of a medicare supplemental policy shall not request, require, or purchase genetic information (including information about a request for or a receipt of genetic services by an individual or family member of such individual) concerning a participant, beneficiary, or enrollee prior to the enrollment, and in connection with such enrollment, of such individual under the plan, coverage, or policy.

[(3) INCIDENTAL COLLECTION.—Where a group health plan, health insurance issuer, or issuer of a medicare supplemental policy obtains genetic information incidental to the requesting, requiring, or purchasing of other information concerning a participant, beneficiary, or enrollee, such request, requirement, or purchase shall not be considered a violation of this subsection if—

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

[(B) any genetic information (including information about a request for or receipt of genetic services) requested, required, or purchased is not used or disclosed in violation of subsection (b).

[(d) APPLICATION OF CONFIDENTIALITY STANDARDS.—The provisions of subsections (b) and (c) shall not apply—

[(1) to group health plans, health insurance issuers, or issuers of medicare supplemental policies that are not otherwise covered under the regulations promulgated by the Secretary of Health and Human Services under part C of title XI of the Social Security Act (42 U.S.C. 1320d et seq.) and section 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note); and

[(2) to genetic information that is not considered to be individually-identifiable health information under the regulations promulgated by the Secretary of Health and Human Services under part C of title XI of the Social Security Act (42 U.S.C. 1320d et seq.) and section 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note).

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

[(f) PREEMPTION.—

[(1) IN GENERAL.—A provision or requirement under this section or a regulation promulgated under this section shall supersede any contrary provision of State law unless such provision of State law imposes requirements, standards, or implementation specifications that are more stringent than the requirements, standards, or implementation specifications imposed under this section or such regulations. No penalty, remedy, or cause of action to enforce such a State law that is more stringent shall be preempted by this section.

[(2) RULE OF CONSTRUCTION.—Nothing in paragraph (1) shall be construed to establish a penalty, remedy, or cause of action under State law if such penalty, remedy, or cause of action is not otherwise available under such State law.

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

[(h) DEFINITIONS.—In this section:

[(1) GENETIC INFORMATION; GENETIC SERVICES.—The terms ‘‘family member’’, ‘‘genetic information’’, ‘‘genetic services’’, and ‘‘genetic test’’ have the meanings given such terms in section 2791 of the Public Health Service Act (42 U.S.C. 300gg–91), as amended by this Act.

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

[(3) ISSUER OF A MEDICARE SUPPLEMENTAL POLICY.—The term ‘‘issuer of a medicare supplemental policy’’ means an issuer described in section 1882 of the Social Security Act (42 insert 1395ss).

[(4) SECRETARY.—The term ‘‘Secretary’’ means the Secretary of Health and Human Services.

[SEC. 106. ASSURING COORDINATION.

[(a) IN GENERAL.—Except as provided in subsection (b), the Secretary of the Treasury, the Secretary of Health and Human Services, and the Secretary of Labor shall ensure, through the execution of an interagency memorandum of understanding among such Secretaries, that—

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

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

[(b) Authority of the Secretary.—The Secretary of Health and Human Services has the sole authority to promulgate regulations to implement section 105.

[SEC. 107. REGULATIONS; EFFECTIVE DATE.

[(a) Regulations.—Not later than 1 year after the date of enactment of this title, the Secretary of Labor, the Secretary of Health and Human Services, and the Secretary of the Treasury shall issue final regulations in an accessible format to carry out this title.

[(b) Effective Date.—Except as provided in section 104, the amendments made by this title shall take effect on the date that is 18 months after the date of enactment of this Act.

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

[SEC. 201. DEFINITIONS.

[In this title:

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

[(2) Employee; employer; employment agency; labor organization; member.—

[(A) In general.—The term ''employee'' means—

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

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

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

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

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

[(B) Employer.—The term ''employer'' means—

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

[(ii) an entity employing a State employee described in section 304(a) of the Government Employee Rights Act of 1991;

[(iii) an employing office, as defined in section 101 of the Congressional Accountability Act of 1995;

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

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

[(C) Employment agency; labor organization.—The terms ''employment agency'' and ''labor organization'' have the meanings given the terms in section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

[(D) Member.—The term ''member'', with respect to a labor organization, includes an applicant for membership in a labor organization.

[(3) Family member.—The term ''family member'' means with respect to an individual—

[(A) the spouse of the individual;

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

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

[(4) Genetic information.—

[(A) In general.—Except as provided in subparagraph (B), the term ''genetic information'' means information about—

[(i) an individual's genetic tests;

[(ii) the genetic tests of family members of the individual; or

[(iii) the occurrence of a disease or disorder in family members of the individual.

[(B) Exceptions.—The term ''genetic information'' shall not include information about the sex or age of an individual.

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

[(6) Genetic services.—The term ''genetic services'' means—

[(A) a genetic test;

[(B) genetic counseling (such as obtaining, interpreting or assessing genetic information); or

[(C) genetic education.

[(7) Genetic test.—

[(A) In general.—The term ''genetic test'' means the analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes.

[(B) Exception.—The term ''genetic test'' does not mean an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes.

[SEC. 202. EMPLOYER PRACTICES.

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

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

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

[(b) Acquisition of Genetic Information.—It shall be an unlawful employment practice for an employer to request, require, or purchase genetic information with respect to an employee or a family member of the employee (or information about a request for the receipt of genetic services by such employee or a family member of such employee) except—

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

[(2) where—

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

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

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

[(D) any individually identifiable genetic information provided under subparagraph (C) in connection with the services provided under subparagraph (A) is only available for purposes of such services and shall not be disclosed to the employer except in aggregate terms that do not disclose the identity of specific employees;

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

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

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

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

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

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

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

[(D) the monitoring is in compliance with—

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

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

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

[(c) Preservation of Protections.—In the case of information to which any of paragraphs (1) through (5) of subsection (b) applies, such information may not be used in violation of paragraph (1) or (2) of subsection (a) or treated or disclosed in a manner that violates section 206.

[SEC. 203. EMPLOYMENT AGENCY PRACTICES.

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

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

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

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

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

[(1) where an employment agency inadvertently requests or requires family medical history of the individual or family member of the individual;

[(2) where—

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

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

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

[(D) any individually identifiable genetic information provided under subparagraph (C) in connection with the services provided under subparagraph (A) is only available for purposes of such services and shall not be disclosed to the employment agency except in aggregate terms that do not disclose the identity of specific individuals;

[(3) where an employment agency requests or requires family medical history from the individual to comply with the certification provisions of section 103 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2613) or such requirements under State family and medical leave laws;

[(4) where an employment agency purchases documents that are commercially and publicly available (including newspapers, magazines, periodicals, and books, but not including medical databases or court records) that include family medical history; or

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

[(A) the employment agency provides written notice of the genetic monitoring to the individual;

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

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

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

[(D) the monitoring is in compliance with—

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

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

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

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

[SEC. 204. LABOR ORGANIZATION PRACTICES.

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

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

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

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

[(b) ACQUISITION OF GENETIC INFORMATION.—It shall be an unlawful employment practice for a labor organization to request, require, or purchase genetic information with respect to a member or a family member of the member (or information about a request for the receipt of genetic services by such member or a family member of such member) except—

[(1) where a labor organization inadvertently requests or requires family medical history of the member or family member of the member;

[(2) where—

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

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

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

[(D) any individually identifiable genetic information provided under subparagraph (C) in connection with the services provided under subparagraph (A) is only available for purposes of such services and shall not be disclosed to the labor organization except in aggregate terms that do not disclose the identity of specific members;

[(3) where a labor organization requests or requires family medical history from the members to comply with the certification provisions of section 103 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2613) or such requirements under State family and medical leave laws;

[(4) where a labor organization purchases documents that are commercially and publicly available (including newspapers, magazines, periodicals, and books, but not including medical databases or court records) that include family medical history; or

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

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

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

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

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

[(D) the monitoring is in compliance with—

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

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

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

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

[SEC. 205. TRAINING PROGRAMS.

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

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

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

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

[(b) ACQUISITION OF GENETIC INFORMATION.—It shall be an unlawful employment practice for an employer, labor organization, or joint labor-management committee described in subsection (a) to request, require, or purchase genetic information with respect to an individual or a family member of the individual (or information about a request for the receipt of genetic services by such individual or a family member of such individual) except—

[(1) where the employer, labor organization, or joint labor-management committee inadvertently requests or requires family medical history of the individual or family member of the individual;

[(2) where—

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

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

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

[(D) any individually identifiable genetic information provided under subparagraph (C) in connection with the services provided under subparagraph (A) is only available for purposes of such services and shall not be disclosed to the employer, labor organization, or joint labor-management committee except in aggregate terms that do not disclose the identity of specific individuals;

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

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

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

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

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

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

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

[(D) the monitoring is in compliance with—

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

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

[(E) the employer, labor organization, or joint labor-management committee, excluding any licensed health care professional or board certified genetic counselor that is involved in the genetic monitoring program, receives the results of the monitoring only in aggregate terms that do not disclose the identity of specific individuals;

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

[SEC. 206. CONFIDENTIALITY OF GENETIC INFORMATION.

[(a) TREATMENT OF INFORMATION AS PART OF CONFIDENTIAL MEDICAL RECORD.—If an employer, employment agency, labor organization, or joint labor-management committee possesses genetic information about an employee or member (or information about a request for or receipt of genetic services by such employee or member or family member of such employee or member), such information shall be maintained on separate forms and in separate medical files and be treated as a confidential medical record of the employee or member.

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

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

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

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

[(A) the employer, employment agency, labor organization, or joint labor-management committee may disclose only the genetic information expressly authorized by such order; and

[(B) if the court order was secured without the knowledge of the employee or member to whom the information refers, the employer, employment agency, labor organization, or joint labor-management committee shall provide the employee or member with adequate notice to challenge the court order;

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

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

[SEC. 207. REMEDIES AND ENFORCEMENT.

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

[(1) IN GENERAL.—The powers, remedies, and procedures provided in sections 705, 706, 707, 709, 710, and 711 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–4 et seq.) to the Commission, the Attorney General, or any person, alleging a violation of title VII of that Act (42 U.S.C. 2000e et seq.) shall be the powers, remedies, and procedures this title provides to the Commission, the Attorney General, or any person, respectively, alleging an unlawful employment practice in violation of this title against an employee described in section 201(2)(A)(i), except as provided in paragraphs (2) and (3).

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

[(3) DAMAGES.—The powers, remedies, and procedures provided in section 1977A of the Revised Statutes (42 U.S.C. 1981a), including the limitations contained in subsection (b)(3) of such section 1977A, shall be powers, remedies, and procedures this title provides to the Commission, the Attorney General, or any person, alleging such a practice (not an employment practice specifically excluded from coverage under section 1977A(a)(1) of the Revised Statutes).

[(b) EMPLOYEES COVERED BY GOVERNMENT EMPLOYEE RIGHTS ACT OF 1991.—

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

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

[(3) DAMAGES.—The powers, remedies, and procedures provided in section 1977A of the Revised Statutes (42 U.S.C. 1981a), including the limitations contained in subsection (b)(3) of such section 1977A, shall be powers, remedies, and procedures this title provides to the Commission, or any person, alleging such a practice (not an employment practice specifically excluded from coverage under section 1977A(a)(1) of the Revised Statutes).

[(c) EMPLOYEES COVERED BY CONGRESSIONAL ACCOUNTABILITY ACT OF 1995.—

[(1) IN GENERAL.—The powers, remedies, and procedures provided in the Congressional Accountability Act of 1995 (2 U.S.C. 1301 et seq.) to the Board (as defined in section 101 of that Act (2 U.S.C. 1301)), or any person, alleging a violation of section 201(a)(1) of that Act (42 U.S.C. 1311(a)(1)) shall be the powers, remedies, and procedures this title provides to that Board, or any person, alleging an unlawful employment practice in violation of this title against an employee described in section 201(2)(A)(iii), except as provided in paragraphs (2) and (3).

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

[(3) DAMAGES.—The powers, remedies, and procedures provided in section 1977A of the Revised Statutes (42 U.S.C. 1981a), including the limitations contained in subsection (b)(3) of such section 1977A, shall be powers, remedies, and procedures this title provides to that Board, or any person, alleging such a practice (not an employment practice specifically excluded from coverage under section 1977A(a)(1) of the Revised Statutes).

[(4) OTHER APPLICABLE PROVISIONS.—With respect to a claim alleging a practice described in paragraph (1), title III of the Congressional Accountability Act of 1995 (2 U.S.C. 1381 et seq.) shall apply in the same manner as such title applies with respect to a claim alleging a violation of section 201(a)(1) of such Act (2 U.S.C. 1311(a)(1)).

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

[(1) IN GENERAL.—The powers, remedies, and procedures provided in chapter 5 of title 3, United States Code, to the President, the Commission, the Merit Systems Protection Board, or any person, alleging a violation of section 411(a)(1) of that title, shall be the powers, remedies, and procedures this title provides to the President, the Commission, such Board, or any person, respectively, alleging an unlawful employment practice in violation of this title against an employee described in section 201(2)(A)(iv), except as provided in paragraphs (2) and (3).

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

[(3) DAMAGES.—The powers, remedies, and procedures provided in section 1977A of the Revised Statutes (42 U.S.C. 1981a), including the limitations contained in subsection (b)(3) of such section 1977A, shall be powers, remedies, and procedures this title provides to the President, the Commission, such Board, or any person, alleging such a practice (not an employment practice specifically excluded from coverage under section 1977A(a)(1) of the Revised Statutes).

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

[(1) IN GENERAL.—The powers, remedies, and procedures provided in section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16) to the Commission, the Attorney General, the Librarian of Congress, or any person, alleging a violation of that section shall be the powers, remedies, and procedures this title provides to the Commission, the Attorney General, the Librarian of Congress, or any person, respectively, alleging an unlawful employment practice in violation of this title against an employee or applicant described in section 201(2)(A)(v), except as provided in paragraphs (2) and (3).

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

[(3) DAMAGES.—The powers, remedies, and procedures provided in section 1977A of the Revised Statutes (42 U.S.C. 1981a), including the limitations contained in subsection (b)(3) of such section 1977A, shall be powers, remedies, and procedures this title provides to the Commission, the Attorney General, the Librarian of Congress, or any person, alleging such a practice (not an employment practice specifically excluded from coverage under section 1977A(a)(1) of the Revised Statutes).

[(f) DEFINITION.—In this section, the term ‘‘Commission’’ means the Equal Employment Opportunity Commission.

[SEC. 208. DISPARATE IMPACT.

[(a) GENERAL RULE.—Notwithstanding any other provision of this Act, ‘‘disparate impact’’, as that term is used in section 703(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–d(k)), on the basis of genetic information does not establish a cause of action under this Act.

[(b) COMMISSION.—On the date that is 6 years after the date of enactment of this Act, there shall be established a commission, to be known as the Genetic Nondiscrimination Study Commission (referred to in this section as the ‘‘Commission’’) to review the developing science of genetics and to make recommendations to Congress regarding whether to provide a disparate impact cause of action under this Act.

[(c) MEMBERSHIP.—

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

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

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

[(C) 1 member shall be appointed by the Chairman of the Committee on Health, Education, Labor, and Pensions of the Senate;

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

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

[(F) 1 member shall be appointed by the Minority Leader of the House of Representatives;

[(G) 1 member shall be appointed by the Chairman of the Committee on Education and the Workforce of the House of Representatives; and

[(H) 1 member shall be appointed by the ranking minority member of the Committee on Education and the Workforce of the House of Representatives.

[(2) COMPENSATION AND EXPENSES.—The members of the Commission shall not receive compensation for the performance of services for the Commission, but shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

[(d) ADMINISTRATIVE PROVISIONS.—

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

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

[(3) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out the provisions of this section. Upon request of the Commission, the head of such department or agency shall furnish such information to the Commission.

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

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

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

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

[SEC. 209. CONSTRUCTION.

[Nothing in this title shall be construed to—

[(1) limit the rights or protections of an individual under the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), including coverage afforded to individuals under section 102 of such Act (42 U.S.C. 12112), or under the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.);

[(2)(A) limit the rights or protections of an individual to bring an action under this title against an employer, employment agency, labor organization, or joint labor-management committee for a violation of this title; or

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

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

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

[(5) limit or expand the protections, rights, or obligations of employees or employers under applicable workers' compensation laws;

[(6) limit the authority of a Federal department or agency to conduct or sponsor occupational or other health research that is conducted in compliance with the regulations contained in part 46 of title 45, Code of Federal Regulations (or any corresponding or similar regulation or rule); and

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

[SEC. 210. MEDICAL INFORMATION THAT IS NOT GENETIC INFORMATION.

[An employer, employment agency, labor organization, or joint labor-management committee shall not be considered to be in violation of this title based on the use, acquisition, or disclosure of medical information that is not genetic information about a manifested disease, disorder, or pathological condition of an employee or member, including a manifested disease, disorder, or pathological condition that has or may have a genetic basis.

[SEC. 211. REGULATIONS.

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

[SEC. 212. AUTHORIZATION OF APPROPRIATIONS.

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

[SEC. 213. EFFECTIVE DATE.

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

TITLE III—MISCELLANEOUS PROVISION

[SEC. 301. SEVERABILITY.

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ‘‘Genetic Information Nondiscrimination Act of 2005’’.

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

SEC. 2. FINDINGS.

Congress makes the following findings:

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

(2) The early science of genetics became the basis of State laws that provided for the sterilization of persons having presumed genetic ''defects'' such as mental retardation, mental disease, epilepsy, blindness, and hearing loss, among other conditions. The first sterilization law was enacted in the State of Indiana in 1907. By 1981, a majority of States adopted sterilization laws to ''correct'' apparent genetic traits or tendencies. Many of these State laws have since been repealed, and many have been modified to include essential constitutional requirements of due process and equal protection. However, the current explosion in the science of genetics, and the history of sterilization laws by the States based on early genetic science, compels Congressional action in this area.

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

(4) Congress has been informed of examples of genetic discrimination in the workplace. These include the use of pre-employment genetic screening at Lawrence Berkeley Laboratory, which led to a court decision in favor of the employees in that case Norman-Bloodsaw v. Lawrence Berkeley Laboratory (135 F.3d 1260, 1269 (9th Cir. 1998)). Congress clearly has a compelling public interest in relieving the fear of discrimination and in prohibiting its actual practice in employment and health insurance.

(5) Federal law addressing genetic discrimination in health insurance and employment is incomplete in both the scope and depth of its protections. Moreover, while many States have enacted some type of genetic non-discrimination law, these laws vary widely with respect to their approach, application, and level of protection. Congress has collected substantial evidence that the American public and the medical community find the existing patchwork of State and Federal laws to be confusing and inadequate to protect them from discrimination. Therefore Federal legislation establishing a national and uniform basic standard is necessary to fully protect the public from discrimination and allay their concerns about the potential for discrimination, thereby allowing individuals to take advantage of genetic testing, technologies, research, and new therapies.

TITLE I—GENETIC NONDISCRIMINATION IN HEALTH INSURANCE

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

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

(1) NO ENROLLMENT RESTRICTION FOR GENETIC SERVICES.—Section 702(a)(1)(F) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1182(a)(1)(F)) is amended by inserting before the period the following: ''(including information about a request for or receipt of genetic services by an individual or family member of such individual)''.

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

(A) in paragraph (2)(A), by inserting before the semicolon the following: ''except as provided in paragraph (3)''; and

(B) by adding at the end the following:

''(3) NO DISCRIMINATION IN GROUP PREMIUMS BASED ON GENETIC INFORMATION.—For purposes of this section, a group health plan, or a health insurance issuer offering group health insurance coverage in connection with a group health plan, shall not adjust premium or contribution amounts for a group on the basis of genetic information concerning an individual in the group or a family member of the individual (including information about a request for or receipt of genetic services by an individual or family member of such individual).''.

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

''(c) GENETIC TESTING.—

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

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

''(A) limit the authority of a health care professional who is providing health care services with respect to an individual to request that such individual or a family member of such individual undergo a genetic test;

''(B) limit the authority of a health care professional who is employed by or affiliated with a group health plan or a health insurance issuer and who is providing health care services to an individual as part of a bona fide wellness program to notify such individual of the availability of a genetic test or to provide information to such individual regarding such genetic test; or

''(C) authorize or permit a health care professional to require that an individual undergo a genetic test.

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

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

''(n) ENFORCEMENT OF GENETIC NONDISCRIMINATION REQUIREMENTS.—

''(1) INJUNCTIVE RELIEF FOR IRREPARABLE HARM.—With respect to any violation of subsection (a)(1)(F), (b)(3), or (c) of section 702, a participant or beneficiary may seek relief under subsection 502(a)(1)(B) prior to the exhaustion of available administrative remedies under section 503 if it is demonstrated to the court, by a preponderance of the evidence, that the exhaustion of such remedies would cause irreparable harm to the health of the participant or beneficiary. Any determinations that already have been made under section 503 in such case, or that are made in such case while an action under this paragraph is pending, shall be given due consideration by the court in any action under this subsection in such case.

''(2) EQUITABLE RELIEF FOR GENETIC NONDISCRIMINATION.—

''(A) REINSTATEMENT OF BENEFITS WHERE EQUITABLE RELIEF HAS BEEN AWARDED.—The recovery of benefits by a participant or beneficiary under a civil action under this section may include an administrative penalty under subparagraph (B) and the retroactive reinstatement of coverage under the plan involved to the date on which the participant or beneficiary was denied eligibility for coverage if—

''(i) the civil action was commenced under subsection (a)(1)(B); and

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

''(B) ADMINISTRATIVE PENALTY.—

''(i) IN GENERAL.—An administrator who fails to comply with the requirements of subsection (a)(1)(F), (b)(3), or (c) of section 702 with respect to a participant or beneficiary may, in an action commenced under subsection (a)(1)(B), be personally liable in the discretion of the court, for a penalty in the amount not more than $100 for each day in the noncompliance period.

''(ii) NONCOMPLIANCE PERIOD.—For purposes of clause (i), the term 'noncompliance period' means the period—

''(I) beginning on the date that a failure described in clause (i) occurs; and

''(II) ending on the date that such failure is corrected.

''(iii) PAYMENT TO PARTICIPANT OR BENEFICIARY.—A penalty collected under this subparagraph shall be paid to the participant or beneficiary involved.

''(3) SECRETARIAL ENFORCEMENT AUTHORITY.—

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

''(B) AMOUNT.—

''(i) IN GENERAL.—The amount of the penalty imposed by subparagraph (A) shall be $100 for each day in the noncompliance period with respect to each individual to whom such failure relates.

''(ii) NONCOMPLIANCE PERIOD.—For purposes of this paragraph, the term 'noncompliance period' means, with respect to any failure, the period—

''(I) beginning on the date such failure first occurs; and

''(II) ending on the date such failure is corrected.

''(C) MINIMUM PENALTIES WHERE FAILURE DISCOVERED.—Notwithstanding clauses (i) and (ii) of subparagraph (D):

''(i) IN GENERAL.—In the case of 1 or more failures with respect to an individual—

''(I) which are not corrected before the date on which the plan receives a notice from the Secretary of such violation; and

''(II) which occurred or continued during the period involved;

the amount of penalty imposed by subparagraph (A) by reason of such failures with respect to such individual shall not be less than $2,500.

''(ii) HIGHER MINIMUM PENALTY WHERE VIOLATIONS ARE MORE THAN DE MINIMIS.—To the extent violations for which any person is liable under this paragraph for any year are more than de minimis, clause (i) shall be applied by substituting '$15,000' for '$2,500' with respect to such person.

''(D) LIMITATIONS.—

''(i) PENALTY NOT TO APPLY WHERE FAILURE NOT DISCOVERED EXERCISING REASONABLE DILIGENCE.—No penalty shall be imposed by subparagraph (A) on any failure during any period for which it is established to the satisfaction of the Secretary that the person otherwise liable for such penalty did not know, and exercising reasonable diligence would not have known, that such failure existed.

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

''(I) such failure was due to reasonable cause and not to willful neglect; and

''(II) such failure is corrected during the 30-day period beginning on the first date the person otherwise liable for such penalty knew, or exercising reasonable diligence would have known, that such failure existed.

''(iii) OVERALL LIMITATION FOR UNINTENTIONAL FAILURES.—In the case of failures which are due to reasonable cause and not to willful neglect, the penalty imposed by subparagraph (A) for failures shall not exceed the amount equal to the lesser of—

''(I) 10 percent of the aggregate amount paid or incurred by the employer (or predecessor employer) during the preceding taxable year for group health plans; or

''(II) $500,000.

''(E) WAIVER BY SECRETARY.—In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the penalty imposed by subparagraph (A) to the extent that the payment of such penalty would be excessive relative to the failure involved.''.

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

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

''(A) the spouse of the individual;

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

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

''(6) GENETIC INFORMATION.—

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

''(i) an individual's genetic tests;

''(ii) the genetic tests of family members of the individual; or

''(iii) the occurrence of a disease or disorder in family members of the individual.

''(B) EXCLUSIONS.—The term 'genetic information' shall not include information about the sex or age of an individual.

''(7) GENETIC TEST.—

''(A) IN GENERAL.—The term 'genetic test' means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes.

''(B) EXCEPTIONS.—The term 'genetic test' does not mean—

''(i) an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or

''(ii) an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.

''(8) GENETIC SERVICES.—The term 'genetic services' means—

''(A) a genetic test;

''(B) genetic counseling (such as obtaining, interpreting, or assessing genetic information); or

''(C) genetic education.''.

(e) REGULATIONS AND EFFECTIVE DATE.—

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

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

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

(a) AMENDMENTS RELATING TO THE GROUP MARKET.—

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

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

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

(i) in paragraph (2)(A), by inserting before the semicolon the following: '', except as provided in paragraph (3)''; and

(ii) by adding at the end the following:

''(3) NO DISCRIMINATION IN GROUP PREMIUMS BASED ON GENETIC INFORMATION.—For purposes of this section, a group health plan, or a health insurance issuer offering group health insurance coverage in connection with a group health plan, shall not adjust premium or contribution amounts for a group on the basis of genetic information concerning an individual in the group or a family member of the individual (including information about a request for or receipt of genetic services by an individual or family member of such individual).''.

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

''(c) GENETIC TESTING.—

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

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

''(A) limit the authority of a health care professional who is providing health care services with respect to an individual to request that such individual or a family member of such individual undergo a genetic test;

''(B) limit the authority of a health care professional who is employed by or affiliated with a group health plan or a health insurance issuer and who is providing health care services to an individual as part of a bona fide wellness program to notify such individual of the availability of a genetic test or to provide information to such individual regarding such genetic test; or

''(C) authorize or permit a health care professional to require that an individual undergo a genetic test.

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

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

''(3) ENFORCEMENT AUTHORITY RELATING TO GENETIC DISCRIMINATION.—

''(A) GENERAL RULE.—In the cases described in paragraph (1), notwithstanding the provisions of paragraph (2)(C), the following provisions shall apply with respect to an action under this subsection by the Secretary with respect to any failure of a health insurance issuer in connection with a group health plan, to meet the requirements of subsection (a)(1)(F), (b)(3), or (c) of section 2702.

''(B) AMOUNT.—

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

''(ii) NONCOMPLIANCE PERIOD.—For purposes of this paragraph, the term 'noncompliance period' means, with respect to any failure, the period—

''(I) beginning on the date such failure first occurs; and

''(II) ending on the date such failure is corrected.

''(C) MINIMUM PENALTIES WHERE FAILURE DISCOVERED.—Notwithstanding clauses (i) and (ii) of subparagraph (D):

''(i) IN GENERAL.—In the case of 1 or more failures with respect to an individual—

''(I) which are not corrected before the date on which the plan receives a notice from the Secretary of such violation; and

''(II) which occurred or continued during the period involved;

the amount of penalty imposed by subparagraph (A) by reason of such failures with respect to such individual shall not be less than $2,500.

''(ii) HIGHER MINIMUM PENALTY WHERE VIOLATIONS ARE MORE THAN DE MINIMIS.—To the extent violations for which any person is liable under this paragraph for any year are more than de minimis, clause (i) shall be applied by substituting '$15,000' for '$2,500' with respect to such person.

''(D) LIMITATIONS.—

''(i) PENALTY NOT TO APPLY WHERE FAILURE NOT DISCOVERED EXERCISING REASONABLE DILIGENCE.—No penalty shall be imposed by subparagraph (A) on any failure during any period for which it is established to the satisfaction of the Secretary that the person otherwise liable for such penalty did not know, and exercising reasonable diligence would not have known, that such failure existed.

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

''(I) such failure was due to reasonable cause and not to willful neglect; and

''(II) such failure is corrected during the 30-day period beginning on the first date the person otherwise liable for such penalty knew, or exercising reasonable diligence would have known, that such failure existed.

''(iii) OVERALL LIMITATION FOR UNINTENTIONAL FAILURES.—In the case of failures which are due to reasonable cause and not to willful neglect, the penalty imposed by subparagraph (A) for failures shall not exceed the amount equal to the lesser of—

''(I) 10 percent of the aggregate amount paid or incurred by the employer (or predecessor employer) during the preceding taxable year for group health plans; or

''(II) $500,000.

''(E) WAIVER BY SECRETARY.—In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the penalty imposed by subparagraph (A) to the extent that the payment of such penalty would be excessive relative to the failure involved.''.

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

''(15) FAMILY MEMBER.—The term 'family member' means with respect to an individual—

''(A) the spouse of the individual;

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

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

''(16) GENETIC INFORMATION.—

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

''(i) an individual's genetic tests;

''(ii) the genetic tests of family members of the individual; or

''(iii) the occurrence of a disease or disorder in family members of the individual.

''(B) EXCLUSIONS.—The term 'genetic information' shall not include information about the sex or age of an individual.

''(17) GENETIC TEST.—

''(A) IN GENERAL.—The term 'genetic test' means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes.

''(B) EXCEPTIONS.—The term 'genetic test' does not mean—

''(i) an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or

''(ii) an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.

''(18) GENETIC SERVICES.—The term 'genetic services' means—

''(A) a genetic test;

''(B) genetic counseling (such as obtaining, interpreting, or assessing genetic information); or

''(C) genetic education.''.

(b) AMENDMENT RELATING TO THE INDIVIDUAL MARKET.—

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

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

(B) by adding at the end the following:

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

''(a) PROHIBITION ON GENETIC INFORMATION AS A CONDITION OF ELIGIBILITY.—A health insurance issuer offering health insurance coverage in the individual market may not establish rules for the eligibility (including continued eligibility) of any individual to enroll in individual health insurance coverage based on genetic information (including information about a request for or receipt of genetic services by an individual or family member of such individual).

''(b) PROHIBITION ON GENETIC INFORMATION IN SETTING PREMIUM RATES.—A health insurance issuer offering health insurance coverage in the individual market shall not adjust premium or contribution amounts for an individual on the basis of genetic information concerning the individual or a family member of the individual (including information about a request for or receipt of genetic services by an individual or family member of such individual).

''(c) GENETIC TESTING.—

''(1) LIMITATION ON REQUESTING OR REQUIRING GENETIC TESTING.—A health insurance issuer offering health insurance coverage in the individual market shall not request or require an individual or a family member of such individual to undergo a genetic test.

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

''(A) limit the authority of a health care professional who is providing health care services with respect to an individual to request that such individual or a family member of such individual undergo a genetic test;

''(B) limit the authority of a health care professional who is employed by or affiliated with a health insurance issuer and who is providing health care services to an individual as part of a bona fide wellness program to notify such individual of the availability of a genetic test or to provide information to such individual regarding such genetic test; or

''(C) authorize or permit a health care professional to require that an individual undergo a genetic test.''.

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

''(b) SECRETARIAL ENFORCEMENT AUTHORITY.—The Secretary shall have the same authority in relation to enforcement of the provisions of this part with respect to issuers of health insurance coverage in the individual market in a State as the Secretary has under section 2722(b)(2), and section 2722(b)(3) with respect to violations of genetic nondiscrimination provisions, in relation to the enforcement of the provisions of part A with respect to issuers of health insurance coverage in the small group market in the State.''.

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

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

(2) by adding at the end the following:

''(D) ELECTION NOT APPLICABLE TO REQUIREMENTS CONCERNING GENETIC INFORMATION.—The election described in subparagraph (A) shall not be available with respect to the provisions of subsections (a)(1)(F) and (c) of section 2702 and the provisions of section 2702(b) to the extent that such provisions apply to genetic information (or information about a request for or the receipt of genetic services by an individual or a family member of such individual).''.

(d) REGULATIONS AND EFFECTIVE DATE.—

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

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

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

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

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

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

(1) NO ENROLLMENT RESTRICTION FOR GENETIC SERVICES.—Section 9802(a)(1)(F) of the Internal Revenue Code of 1986 is amended by inserting before the period the following: ''(including information about a request for or receipt of genetic services by an individual or family member of such individual)''.

(2) NO DISCRIMINATION IN GROUP PREMIUMS BASED ON GENETIC INFORMATION.—Section 9802(b) of the Internal Revenue Code of 1986 is amended—

(A) in paragraph (2)(A), by inserting before the semicolon the following: '', except as provided in paragraph (3)''; and

(B) by adding at the end the following:

''(3) NO DISCRIMINATION IN GROUP PREMIUMS BASED ON GENETIC INFORMATION.—For purposes of this section, a group health plan shall not adjust premium or contribution amounts for a group on the basis of genetic information concerning an individual in the group or a family member of the individual (including information about a request for or receipt of genetic services by an individual or family member of such individual).''.

(b) LIMITATIONS ON GENETIC TESTING.—Section 9802 of the Internal Revenue Code of 1986 is amended by adding at the end the following:

''(d) GENETIC TESTING AND GENETIC SERVICES.—

''(1) LIMITATION ON REQUESTING OR REQUIRING GENETIC TESTING.—A group health plan shall not request or require an individual or a family member of such individual to undergo a genetic test.

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

''(A) limit the authority of a health care professional who is providing health care services with respect to an individual to request that such individual or a family member of such individual undergo a genetic test;

''(B) limit the authority of a health care professional who is employed by or affiliated with a group health plan and who is providing health care services to an individual as part of a bona fide wellness program to notify such individual of the availability of a genetic test or to provide information to such individual regarding such genetic test; or

''(C) authorize or permit a health care professional to require that an individual undergo a genetic test.

''(e) APPLICATION TO ALL PLANS.—The provisions of subsections (a)(1)(F), (b)(3), and (d) shall apply to group health plans and health insurance issuers without regard to section 9831(a)(2).''.

(c) DEFINITIONS.—Section 9832(d) of the Internal Revenue Code of 1986 is amended by adding at the end the following:

''(6) FAMILY MEMBER.—The term 'family member' means with respect to an individual—

''(A) the spouse of the individual;

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

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

''(7) GENETIC SERVICES.—The term 'genetic services' means—

''(A) a genetic test;

''(B) genetic counseling (such as obtaining, interpreting, or assessing genetic information); or

''(C) genetic education.

''(8) GENETIC INFORMATION.—

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

''(i) an individual's genetic tests;

''(ii) the genetic tests of family members of the individual; or

''(iii) the occurrence of a disease or disorder in family members of the individual.

''(B) EXCLUSIONS.—The term 'genetic information' shall not include information about the sex or age of an individual.

''(9) GENETIC TEST.—

''(A) IN GENERAL.—The term 'genetic test' means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes.

''(B) EXCEPTIONS.—The term 'genetic test' does not mean—

''(i) an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or

''(ii) an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.''.

(d) REGULATIONS AND EFFECTIVE DATE.—

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

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

SEC. 104. 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 genetic information concerning the individual (or information about a request for, or the receipt of, genetic services by such individual or family member of such individual).

''(ii) For purposes of clause (i), the terms 'family member', 'genetic services', and 'genetic information' shall have the meanings given such terms in subsection (x).''.

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

(b) LIMITATIONS ON GENETIC TESTING.—

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

''(x) LIMITATIONS ON GENETIC TESTING.—

''(1) GENETIC TESTING.—

''(A) LIMITATION ON REQUESTING OR REQUIRING GENETIC TESTING.—An issuer of a medicare supplemental policy shall not request or require an individual or a family member of such individual to undergo a genetic test.

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

''(i) limit the authority of a health care professional who is providing health care services with respect to an individual to request that such individual or a family member of such individual undergo a genetic test;

''(ii) limit the authority of a health care professional who is employed by or affiliated with an issuer of a medicare supplemental policy and who is providing health care services to an individual as part of a bona fide wellness program to notify such individual of the availability of a genetic test or to provide information to such individual regarding such genetic test; or

''(iii) authorize or permit a health care professional to require that an individual undergo a genetic test.

''(2) DEFINITIONS.—In this subsection:

''(A) 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).

''(B) GENETIC INFORMATION.—

''(i) IN GENERAL.—Except as provided in clause (ii), the term 'genetic information' means information about—

''(I) an individual's genetic tests;

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

''(III) the occurrence of a disease or disorder in family members of the individual.

''(ii) EXCLUSIONS.—The term 'genetic information' shall not include information about the sex or age of an individual.

''(C) GENETIC TEST.—

''(i) IN GENERAL.—The term 'genetic test' means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes.

''(ii) EXCEPTIONS.—The term 'genetic test' does not mean—

''(I) an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or

''(II) an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.

''(D) GENETIC SERVICES.—The term 'genetic services' means—

''(i) a genetic test;

''(ii) genetic counseling (such as obtaining, interpreting, or assessing genetic information); or

''(iii) genetic education.

''(E) ISSUER OF A MEDICARE SUPPLEMENTAL POLICY.—The term 'issuer of a medicare supplemental policy' includes a third-party administrator or other person acting for or on behalf of such issuer.''.

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

''(4) The issuer of the medicare supplemental policy complies with subsection (s)(2)(E) and subsection (x).''.

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

(c) TRANSITION PROVISIONS.—

(1) IN GENERAL.—If the Secretary of Health and Human Services identifies a State as requiring a change to its statutes or regulations to conform its regulatory program to the changes made by this section, the State regulatory program shall not be considered to be out of compliance with the requirements of section 1882 of the Social Security Act due solely to failure to make such change until the date specified in paragraph (4).

(2) NAIC STANDARDS.—If, not later than June 30, 2006, the National Association of Insurance Commissioners (in this subsection referred to as the ''NAIC'') modifies its NAIC Model Regulation relating to section 1882 of the Social Security Act (referred to in such section as the 1991 NAIC Model Regulation, as subsequently modified) to conform to the amendments made by this section, such revised regulation incorporating the modifications shall be considered to be the applicable NAIC model regulation (including the revised NAIC model regulation and the 1991 NAIC Model Regulation) for the purposes of such section.

(3) SECRETARY STANDARDS.—If the NAIC does not make the modifications described in paragraph (2) within the period specified in such paragraph, the Secretary of Health and Human Services shall, not later than October 1, 2006, make the modifications described in such paragraph and such revised regulation incorporating the modifications shall be considered to be the appropriate regulation for the purposes of such section.

(4) DATE SPECIFIED.—

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

(i) the date the State changes its statutes or regulations to conform its regulatory program to the changes made by this section, or

(ii) October 1, 2006.

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

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

(ii) having a legislature which is not scheduled to meet in 2006 in a legislative session in which such legislation may be considered, the date specified in this paragraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after July 1, 2006. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

SEC. 105. PRIVACY AND CONFIDENTIALITY.

(a) APPLICABILITY.—Except as provided in subsection (d), the provisions of this section shall apply to group health plans, health insurance issuers (including issuers in connection with group health plans or individual health coverage), and issuers of medicare supplemental policies, without regard to—

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

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

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

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

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

(2) PROHIBITION ON UNDERWRITING AND PREMIUM RATING.—Notwithstanding paragraph (1), a group health plan, a health insurance issuer, or issuer of a medicare supplemental policy shall not use or disclose genetic information (including information about a request for or a receipt of genetic services by an individual or family member of such individual) for purposes of underwriting, determinations of eligibility to enroll, premium rating, or the creation, renewal or replacement of a plan, contract or coverage for health insurance or health benefits.

(c) PROHIBITION ON COLLECTION OF GENETIC INFORMATION.—

(1) IN GENERAL.—A group health plan, health insurance issuer, or issuer of a medicare supplemental policy shall not request, require, or purchase genetic information (including information about a request for or a receipt of genetic services by an individual or family member of such individual) for purposes of underwriting, determinations of eligibility to enroll, premium rating, or the creation, renewal or replacement of a plan, contract or coverage for health insurance or health benefits.

(2) LIMITATION RELATING TO THE COLLECTION OF GENETIC INFORMATION PRIOR TO ENROLLMENT.—A group health plan, health insurance issuer, or issuer of a medicare supplemental policy shall not request, require, or purchase genetic information (including information about a request for or a receipt of genetic services by an individual or family member of such individual) concerning a participant, beneficiary, or enrollee prior to the enrollment, and in connection with such enrollment, of such individual under the plan, coverage, or policy.

(3) INCIDENTAL COLLECTION.—Where a group health plan, health insurance issuer, or issuer of a medicare supplemental policy obtains genetic information incidental to the requesting, requiring, or purchasing of other information concerning a participant, beneficiary, or enrollee, such request, requirement, or purchase shall not be considered a violation of this subsection if—

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

(B) any genetic information (including information about a request for or receipt of genetic services) requested, required, or purchased is not used or disclosed in violation of subsection (b).

(d) APPLICATION OF CONFIDENTIALITY STANDARDS.—The provisions of subsections (b) and (c) shall not apply—

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

(2) to genetic information that is not considered to be individually-identifiable health information under the regulations promulgated by the Secretary of Health and Human Services under part C of title XI of the Social Security Act (42 U.S.C. 1320d et seq.) and section 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note).

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

(f) PREEMPTION.—

(1) IN GENERAL.—A provision or requirement under this section or a regulation promulgated under this section shall supersede any contrary provision of State law unless such provision of State law imposes requirements, standards, or implementation specifications that are more stringent than the requirements, standards, or implementation specifications imposed under this section or such regulations. No penalty, remedy, or cause of action to enforce such a State law that is more stringent shall be preempted by this section.

(2) RULE OF CONSTRUCTION.—Nothing in paragraph (1) shall be construed to establish a penalty, remedy, or cause of action under State law if such penalty, remedy, or cause of action is not otherwise available under such State law.

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

(h) DEFINITIONS.—In this section:

(1) GENETIC INFORMATION; GENETIC SERVICES.—The terms ''family member'', ''genetic information'', ''genetic services'', and ''genetic test'' have the meanings given such terms in section 2791 of the Public Health Service Act (42 U.S.C. 300gg–91), as amended by this Act.

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

(3) ISSUER OF A MEDICARE SUPPLEMENTAL POLICY.—The term ''issuer of a medicare supplemental policy'' means an issuer described in section 1882 of the Social Security Act (42 insert 1395ss).

(4) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

SEC. 106. ASSURING COORDINATION.

(a) IN GENERAL.—Except as provided in subsection (b), the Secretary of the Treasury, the Secretary of Health and Human Services, and the Secretary of Labor shall ensure, through the execution of an interagency memorandum of understanding among such Secretaries, that—

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

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

(b) AUTHORITY OF THE SECRETARY.—The Secretary of Health and Human Services has the sole authority to promulgate regulations to implement section 105.

SEC. 107. REGULATIONS; EFFECTIVE DATE.

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

(b) EFFECTIVE DATE.—Except as provided in section 104, the amendments made by this title shall take effect on the date that is 18 months after the date of enactment of this Act.

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

SEC. 201. DEFINITIONS.

In this title:

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

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

(A) IN GENERAL.—The term ''employee'' means—

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

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

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

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

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

(B) EMPLOYER.—The term ''employer'' means—

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

(ii) an entity employing a State employee described in section 304(a) of the Government Employee Rights Act of 1991;

(iii) an employing office, as defined in section 101 of the Congressional Accountability Act of 1995;

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

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

(C) EMPLOYMENT AGENCY; LABOR ORGANIZATION.—The terms ''employment agency'' and ''labor organization'' have the meanings given the terms in section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

(D) MEMBER.—The term ''member'', with respect to a labor organization, includes an applicant for membership in a labor organization.

(3) FAMILY MEMBER.—The term ''family member'' means with respect to an individual—

(A) the spouse of the individual;

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

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

(4) GENETIC INFORMATION.—

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

(i) an individual's genetic tests;

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

(iii) the occurrence of a disease or disorder in family members of the individual.

(B) EXCEPTIONS.—The term ''genetic information'' shall not include information about the sex or age of an individual.

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

(6) GENETIC SERVICES.—The term ''genetic services'' means—

(A) a genetic test;

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

(C) genetic education.

(7) GENETIC TEST.—

(A) IN GENERAL.—The term ''genetic test'' means the analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes.

(B) EXCEPTION.—The term ''genetic test'' does not mean an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes.

SEC. 202. EMPLOYER PRACTICES.

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

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

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

(b) ACQUISITION OF GENETIC INFORMATION.—It shall be an unlawful employment practice for an employer to request, require, or purchase genetic information with respect to an employee or a family member of the employee (or information about a request for the receipt of genetic services by such employee or a family member of such employee) except—

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

(2) where—

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

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

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

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

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

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

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

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

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

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

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

(D) the monitoring is in compliance with—

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

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

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

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

SEC. 203. EMPLOYMENT AGENCY PRACTICES.

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

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

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

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

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

(1) where an employment agency inadvertently requests or requires family medical history of the individual or family member of the individual;

(2) where—

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

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

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

(D) any individually identifiable genetic information provided under subparagraph (C) in connection with the services provided under subparagraph (A) is only available for purposes of such services and shall not be disclosed to the employment agency except in aggregate terms that do not disclose the identity of specific individuals;

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

(4) where an employment agency purchases documents that are commercially and publicly available (including newspapers, magazines, periodicals, and books, but not including medical databases or court records) that include family medical history; or

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

(A) the employment agency provides written notice of the genetic monitoring to the individual;

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

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

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

(D) the monitoring is in compliance with—

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

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

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

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

SEC. 204. LABOR ORGANIZATION PRACTICES.

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

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

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

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

(b) ACQUISITION OF GENETIC INFORMATION.—It shall be an unlawful employment practice for a labor organization to request, require, or purchase genetic information with respect to a member or a family member of the member (or information about a request for the receipt of genetic services by such member or a family member of such member) except—

(1) where a labor organization inadvertently requests or requires family medical history of the member or family member of the member;

(2) where—

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

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

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

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

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

(4) where a labor organization purchases documents that are commercially and publicly available (including newspapers, magazines, periodicals, and books, but not including medical databases or court records) that include family medical history; or

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

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

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

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

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

(D) the monitoring is in compliance with—

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

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

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

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

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

SEC. 205. TRAINING PROGRAMS.

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

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

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

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

(b) ACQUISITION OF GENETIC INFORMATION.—It shall be an unlawful employment practice for an employer, labor organization, or joint labor-management committee described in subsection (a) to request, require, or purchase genetic information with respect to an individual or a family member of the individual (or information about a request for the receipt of genetic services by such individual or a family member of such individual) except—

(1) where the employer, labor organization, or joint labor-management committee inadvertently requests or requires family medical history of the individual or family member of the individual;

(2) where—

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

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

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

(D) any individually identifiable genetic information provided under subparagraph (C) in connection with the services provided under subparagraph (A) is only available for purposes of such services and shall not be disclosed to the employer, labor organization, or joint labor-management committee except in aggregate terms that do not disclose the identity of specific individuals;

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

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

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

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

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

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

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

(D) the monitoring is in compliance with—

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

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

(E) the employer, labor organization, or joint labor-management committee, excluding any licensed health care professional or board certified genetic counselor that is involved in the genetic monitoring program, receives the results of the monitoring only in aggregate terms that do not disclose the identity of specific individuals;

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

SEC. 206. CONFIDENTIALITY OF GENETIC INFORMATION.

(a) TREATMENT OF INFORMATION AS PART OF CONFIDENTIAL MEDICAL RECORD.—If an employer, employment agency, labor organization, or joint labor-management committee possesses genetic information about an employee or member (or information about a request for or receipt of genetic services by such employee or member or family member of such employee or member), such information shall be maintained on separate forms and in separate medical files and be treated as a confidential medical record of the employee or member.

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

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

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

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

(A) the employer, employment agency, labor organization, or joint labor-management committee may disclose only the genetic information expressly authorized by such order; and

(B) if the court order was secured without the knowledge of the employee or member to whom the information refers, the employer, employment agency, labor organization, or joint labor-management committee shall provide the employee or member with adequate notice to challenge the court order;

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

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

SEC. 207. REMEDIES AND ENFORCEMENT.

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

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

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

(3) DAMAGES.—The powers, remedies, and procedures provided in section 1977A of the Revised Statutes (42 U.S.C. 1981a), including the limitations contained in subsection (b)(3) of such section 1977A, shall be powers, remedies, and procedures this title provides to the Commission, the Attorney General, or any person, alleging such a practice (not an employment practice specifically excluded from coverage under section 1977A(a)(1) of the Revised Statutes).

(b) EMPLOYEES COVERED BY GOVERNMENT EMPLOYEE RIGHTS ACT OF 1991.—

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

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

(3) DAMAGES.—The powers, remedies, and procedures provided in section 1977A of the Revised Statutes (42 U.S.C. 1981a), including the limitations contained in subsection (b)(3) of such section 1977A, shall be powers, remedies, and procedures this title provides to the Commission, or any person, alleging such a practice (not an employment practice specifically excluded from coverage under section 1977A(a)(1) of the Revised Statutes).

(c) Employees Covered by Congressional Accountability Act of 1995.—

(1) In general.—The powers, remedies, and procedures provided in the Congressional Accountability Act of 1995 (2 U.S.C. 1301 et seq.) to the Board (as defined in section 101 of that Act (2 U.S.C. 1301)), or any person, alleging a violation of section 201(a)(1) of that Act (42 U.S.C. 1311(a)(1)) shall be the powers, remedies, and procedures this title provides to that Board, or any person, alleging an unlawful employment practice in violation of this title against an employee described in section 201(2)(A)(iii), except as provided in paragraphs (2) and (3).

(2) Costs and fees.—The powers, remedies, and procedures provided in subsections (b) and (c) of section 722 of the Revised Statutes (42 U.S.C. 1988), shall be powers, remedies, and procedures this title provides to that Board, or any person, alleging such a practice.

(3) Damages.—The powers, remedies, and procedures provided in section 1977A of the Revised Statutes (42 U.S.C. 1981a), including the limitations contained in subsection (b)(3) of such section 1977A, shall be powers, remedies, and procedures this title provides to that Board, or any person, alleging such a practice (not an employment practice specifically excluded from coverage under section 1977A(a)(1) of the Revised Statutes).

(4) Other applicable provisions.—With respect to a claim alleging a practice described in paragraph (1), title III of the Congressional Accountability Act of 1995 (2 U.S.C. 1381 et seq.) shall apply in the same manner as such title applies with respect to a claim alleging a violation of section 201(a)(1) of such Act (2 U.S.C. 1311(a)(1)).

(d) Employees Covered by Chapter 5 of Title 3, United States Code.—

(1) In general.—The powers, remedies, and procedures provided in chapter 5 of title 3, United States Code, to the President, the Commission, the Merit Systems Protection Board, or any person, alleging a violation of section 411(a)(1) of that title, shall be the powers, remedies, and procedures this title provides to the President, the Commission, such Board, or any person, respectively, alleging an unlawful employment practice in violation of this title against an employee described in section 201(2)(A)(iv), except as provided in paragraphs (2) and (3).

(2) Costs and fees.—The powers, remedies, and procedures provided in subsections (b) and (c) of section 722 of the Revised Statutes (42 U.S.C. 1988), shall be powers, remedies, and procedures this title provides to the President, the Commission, such Board, or any person, alleging such a practice.

(3) Damages.—The powers, remedies, and procedures provided in section 1977A of the Revised Statutes (42 U.S.C. 1981a), including the limitations contained in subsection (b)(3) of such section 1977A, shall be powers, remedies, and procedures this title provides to the President, the Commission, such Board, or any person, alleging such a practice (not an employment practice specifically excluded from coverage under section 1977A(a)(1) of the Revised Statutes).

(e) Employees Covered by Section 717 of the Civil Rights Act of 1964.—

(1) In general.—The powers, remedies, and procedures provided in section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16) to the Commission, the Attorney General, the Librarian of Congress, or any person, alleging a violation of that section shall be the powers, remedies, and procedures this title provides to the Commission, the Attorney General, the Librarian of Congress, or any person, respectively, alleging an unlawful employment practice in violation of this title against an employee or applicant described in section 201(2)(A)(v), except as provided in paragraphs (2) and (3).

(2) Costs and fees.—The powers, remedies, and procedures provided in subsections (b) and (c) of section 722 of the Revised Statutes (42 U.S.C. 1988), shall be powers, remedies, and procedures this title provides to the Commission, the Attorney General, the Librarian of Congress, or any person, alleging such a practice.

(3) Damages.—The powers, remedies, and procedures provided in section 1977A of the Revised Statutes (42 U.S.C. 1981a), including the limitations contained in subsection (b)(3) of such section 1977A, shall be powers, remedies, and procedures this title provides to the Commission, the Attorney General, the Librarian of Congress, or any person, alleging such a practice (not an employment practice specifically excluded from coverage under section 1977A(a)(1) of the Revised Statutes).

(f) Definition.—In this section, the term ‘‘Commission’’ means the Equal Employment Opportunity Commission.

SEC. 208. DISPARATE IMPACT.

(a) General Rule.—Notwithstanding any other provision of this Act, ‘‘disparate impact’’, as that term is used in section 703(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–d(k)), on the basis of genetic information does not establish a cause of action under this Act.

(b) Commission.—On the date that is 6 years after the date of enactment of this Act, there shall be established a commission, to be known as the Genetic Nondiscrimination Study Commission (referred to in this section as the ‘‘Commission’’) to review the developing science of genetics and to make recommendations to Congress regarding whether to provide a disparate impact cause of action under this Act.

(c) Membership.—

(1) In general.—The Commission shall be composed of 8 members, of which—

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

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

(C) 1 member shall be appointed by the Chairman of the Committee on Health, Education, Labor, and Pensions of the Senate;

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

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

(F) 1 member shall be appointed by the Minority Leader of the House of Representatives;

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

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

(2) Compensation and expenses.—The members of the Commission shall not receive compensation for the performance of services for the Commission, but shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(d) Administrative Provisions.—

(1) Location.—The Commission shall be located in a facility maintained by the Equal Employment Opportunity Commission.

(2) Detail of government employees.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(3) Information from federal agencies.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out the provisions of this section. Upon request of the Commission, the head of such department or agency shall furnish such information to the Commission.

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

(5) Postal services.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

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

(f) Authorization of Appropriations.—There are authorized to be appropriated to the Equal Employment Opportunity Commission such sums as may be necessary to carry out this section.

SEC. 209. CONSTRUCTION.

Nothing in this title shall be construed to—

(1) limit the rights or protections of an individual under the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), including coverage afforded to individuals under section 102 of such Act (42 U.S.C. 12112), or under the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.);

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

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

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

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

(5) limit or expand the protections, rights, or obligations of employees or employers under applicable workers' compensation laws;

(6) limit the authority of a Federal department or agency to conduct or sponsor occupational or other health research that is conducted in compliance with the regulations contained in part 46 of title 45, Code of Federal Regulations (or any corresponding or similar regulation or rule); and

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

SEC. 210. MEDICAL INFORMATION THAT IS NOT GENETIC INFORMATION.

An employer, employment agency, labor organization, or joint labor-management committee shall not be considered to be in violation of this title based on the use, acquisition, or disclosure of medical information that is not genetic information about a manifested disease, disorder, or pathological condition of an employee or member, including a manifested disease, disorder, or pathological condition that has or may have a genetic basis.

SEC. 211. REGULATIONS.

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

SEC. 212. AUTHORIZATION OF APPROPRIATIONS.

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

SEC. 213. EFFECTIVE DATE.

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

TITLE III—MISCELLANEOUS PROVISION

SEC. 301. SEVERABILITY.

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

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, this is a bill that has been about 5 years in the works. It was introduced by Senator SNOWE, who was joined by Senators FRIST, GREGG, KENNEDY, myself, and others. It has been introduced a number of times, but in 2003 this bill was passed by a vote of 95 to nothing. The only difference between that bill and the one before you today is deletion of a provision that makes conforming changes to the Internal Revenue Code to ensure that a small number of health insurance plans, known as church plans, do not discriminate on the basis of genetic information.

We are removing the church plan provision because at the last minute yesterday a concern was raised that the language caused what is called a blue slip problem, which relates to the constitutional requirement that revenue measures originate in the House. There is considerable disagreement as to whether the church plan provision has a revenue impact and whether there is, in fact, a blue slip problem. In my opinion, there is no jurisdictional or constitutional problem with this simple conforming amendment.

The Health, Education, Labor, and Pensions Committee in the Senate took great pains to draft the bill within its own jurisdiction and was disappointed that these concerns were raised at this late date. In the interest of moving this bill and creating the important protections that it guarantees, we are removing the questioned language.

It is my understanding and hope that the House of Representatives will address the question of church plans when it takes up genetic information nondiscrimination legislation. Certainly no one believes that health insurance plans run by churches and other religious organizations should discriminate against individuals on the basis of genetic information. I am confident that when Congress has worked its will and delivered a genetic information bill to President Bush, which he requested, church plans will be treated the same as employer group health plans and individual health plans.

I am pleased that this bill is finally here for debate and we will be able to take it through the process. Again, it is an important step toward eliminating discrimination based on genetic information in both health insurance and employment decisions.

This bill was reported unanimously last week by the Health, Education, Labor, and Pensions Committee. It is identical to S. 2283 in the last Congress, which passed 95 to nothing with strong administration support. The purpose of this legislation is to protect individuals from discrimination in health insurance and employment on the basis of genetic information. It would accomplish this by preventing health insurers and employers from taking any action that would affect an employee's health or employment benefits based on genetic information an employer might discover.

Establishing these protections will allay concerns about the potential for discrimination, and it will encourage individuals to participate in genetic research and to take advantage of genetic testing, new technologies, and new therapies. The legislation will provide substantial protections to those individuals who may suffer from actual genetic discrimination now, or may have some reason to be concerned about it in the future. These steps are essential to fulfilling the tremendous promise of genetic research and science.

The science of genetic technology has seen an explosion of progress in the past few years.

Just 2 years ago, for example, scientists at the National Institutes of Health and elsewhere finally completed assembly of the human genome. What had seemed impossible for so long came to pass. Suddenly, with great fanfare and the attention of the international scientific community, the announcement was made. The human genetic code had been broken.

Among other effects, the work of the Human Genome Project and sister efforts elsewhere has accelerated the ability of scientists to discover genetic ''markers'' for many serious and significant diseases that we may be able to avoid with the proper care and preventive treatment.

Unfortunately, great change such as this sometimes carries with it not only great promise, but also a potential for misuse. That occurs when what should be an exciting breakthrough becomes at the same time a source of fear. For example, some individuals who should have welcomed the new ability to test for markers of inherited diseases instead encountered fear that such information might also be used to deny them insurance coverage or employment security.

Ironically, for some, what could have been a life-saving tool became instead a means to harm the very people it was designed to protect. For too many, it was simply better not to know. Allow me to recount just a few real-life examples, drawn from testimony before NIH panels investigating this issue:

One woman, who suffers from a rare liver disorder, found that both she and her children were rejected by a major insurance company, even though both children were only passive carriers of the disease and would never suffer from it. Only after a news organization contacted the insurer was the denial reversed.

In another example, a woman with a family history of breast cancer found that she, too, carried the genetic marker for that disease—and as a result chose to have a precautionary mastectomy and hysterectomy. After that, her employer received a $13,000 annual increase in his small company's health insurance bill.

As a result, this woman's employer asked her to switch to her husband's insurance and told her that if she did so she would get a raise. Fearing that a switch in coverage would jeopardize her ability to be covered at all, she refused. The employer then raised the premium amounts charged to all his employees.

These accounts, and others like them, make the point very strongly for the need for us to act. Simply put, we need to act now to save lives.

We have before us today an important bill that will address the fault in the system and correct it. It was carefully crafted to alleviate the problems faced by people like those I have mentioned. It was designed to calm the fears of those who are hesitant to subject themselves to genetic tests, knowing that what safeguards are in place may prove to be inadequate. It is a bill to restore their confidence in the system and their faith that the process is fair.

Only if we pass this legislation now will we truly be able to encourage the scientific progress in this field. The science of genetics may well hold our best hope for combating many of our worst afflictions. However, genetics, like the rest of science, will progress best when ideas and information are freely exchanged.

As a former small businessman, I am sensitive to the concerns raised by some in the business community that this legislation might impose new liabilities on employers. I am confident, however, that after they become familiar with the provisions of this bill, such critics will see that it has been carefully written such that its enactment will reduce the risk that an employer will ever be dragged into court to face a claim of genetic discrimination.

It will not do this by letting employers and insurers off the hook. Far from it. Rather, what this bill will do is reduce litigation because its rules are clear, the exceptions are responsible, and the procedure is fair.

Simply put, neither will employees become victims of discrimination nor will employers be sued unreasonably. Why? Because this bill sets a standard for conduct that is easy to understand and easy to follow. We are far better off setting the rules of the road clearly and ''up front,'' rather than allowing them to be set piecemeal through litigation.

We also must act now to ensure legal uniformity and consistency nationwide. About half the States today have laws governing genetic information. However, these laws differ significantly from one another and do not always fully address the problem.

Once this legislation is signed into law we will have a clear, concise and uniform policy on genetic information that will make clear what is and is not an acceptable use for genetic information.

Over the course of the last Congress, I had the pleasure of working on this legislation with colleagues on both sides of the aisle. I thank the majority leader and Senators SNOWE, GREGG, KENNEDY, JEFFORDS, and others for their good efforts to reach a bipartisan agreement on this bill. It will make a difference in more lives than we will ever know.

If we pass this legislation, and pass it we must, we will have taken a great step forward and ensured that the initial breakthroughs of Dr. Watson and Dr. Crick, and the more recent ones by the National Genome Project, will continue to reap benefits for generations to come.

We will finally have a uniform policy in place to ensure that information retrieved from genetic testing will remain confidential and off limits to those who would be tempted to use it to discriminate.

As genetic technology continues to develop in the years to come, the beneficial impact on the public health and our individual lifestyles promises to be enormous. Enactment of the bill before us today will help America secure the realization of that promise.

I yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator is recognized.

Mr. KENNEDY. Mr. President, first I commend my friend and chairman of the Health, Education, Labor, and Pensions Committee, Senator ENZI, for his leadership in reporting out this legislation. As he has outlined, and as I will speak to in a moment, it is a matter of enormous importance to millions of Americans. He has outlined the reasons for that.

When we think back to the time Senator SNOWE and others introduced this legislation a number of years ago, there was a great deal of apprehension, a great deal of concern, and a good deal of opposition to this over that period of time. Due to a good deal of very hard, diligent work by the chairman here, by our staffs, and by many others on our committees, especially Senator JEFFORDS and Senator GREGG, Senator DODD, Senator HARKIN, Senator CLINTON, as well as Senator OLYMPIA SNOWE, we are about to successfully pass this legislation in a very strong bipartisan way, and they deserve great commendation at this time. I hope that with very strong bipartisan support it will send a good message to the House of Representatives that it is worthy to be done, necessary to be done, and has the great and overwhelming support of the American people. I hope we will see action.

I also thank the majority leader for scheduling this bill and giving it priority. As all of us know, BILL FRIST, a physician, knows the extraordinary potential of genetic research and its importance in improving the quality of medical care and in preventing, treating, and curing disease. I want to express our great appreciation to him for giving us the opportunity to speak this afternoon, with the completion of this bill either this evening or tomorrow. We thank him as well.

Throughout our history, the Nation has moved toward a more fair and more just society, often with great difficulty. Along the way, we had setbacks, even some failures. But we have had significant triumphs, too, especially in this past half century.

In 1964 the Congress enacted the Civil Rights Act to end one of the great evils of our time, discrimination against millions of our fellow citizens based on their race, color, religion, sex, or national origin. In 1965 we passed the Voting Rights Act to end discrimination in the right to vote.

In 1967, we passed another important law prohibiting age discrimination in employment.

In 1990, we passed the Americans with Disabilities Act to end discrimination against citizens with mental or physical handicaps.

In 1991, we strengthened the vital protections against job discrimination established in the 1964 Act.

Today we take another step in our national journey to a fairer and more just America by approving important legislation to end another insidious form of bias—discrimination based on the most personal aspect of any individuals, their unique genetic code.

Four years ago, we celebrated an accomplishment that once seemed unimaginable—deciphering the entire sequence of the human DNA code. This amazing accomplishment may well affect the 21st century as profoundly as the invention of the computer or the splitting of the atom affected the 20th century.

I personally believe this is the century of the life sciences with the greatest kind of hope and opportunity for progress in the life science area.

To cite but one example of why this legislation is so important, it was this new knowledge that enabled scientists to decipher the DNA sequence of the SARS virus only weeks after it was first identified.

The extraordinary promise of science to improve health and relieve suffering is in jeopardy, however, if our laws fail to provide adequate protections against abuse and misuse of genetic information.

The bipartisan bill the Senate considers today prohibits health insurers from using genetic information to deny health coverage or raise premiums.

It bars employers from using genetic information to make employment decisions. It prohibits insurers and employers from seeking genetic information, or requesting or requiring individuals to take genetic tests. It bars disclosure of genetic information by an insurer or employer, and provides effective remedies so that anyone who has suffered genetic discrimination can obtain relief.

Congress took an initial step in the right direction when we passed the Health Insurance Portability and Accountability Act. That landmark law established important protections to ensure that those who change their job or lose their job would not also lose their health insurance. It included also a prohibition on genetic discrimination in group health insurance.

The pending bill extends that prohibition to many other types of genetic discrimination, and I commend our colleague from Maine, Senator SNOWE, has been a principal leader on this vital issue for many years.

I also commend our distinguished chairman of the HELP Committee, Senator ENZI, for his impressive commitment to enacting this needed legislation by making it one of the very first items for committee action under his leadership. Other members of our committee have given time, energy and ideas to this important issue, especially Senator JEFFORDS, Senator GREGG, Senator DODD, and Senator HARKIN.

Our majority leader deserves great credit as well. As a physician, he knows the extraordinary potential of genetic research to improve the quality of medical care and prevent, treat, and cure disease. Hopefully, the bipartisan momentum will lead to an enactment of legislation this year.

Few kinds of information are more personal or more private than a person's genetic makeup. This information should not be shared by insurers or employers, or be used in decisions about health coverage or a job. It should only be used by patients and their doctors to make the best possible decisions on diagnosis and treatment.

I hope we can all agree that discrimination on the basis of a person's genetic traits is as unacceptable as discrimination on the basis of race or religion. No American should be denied health insurance or fired from a job because of a genetic test.

Last fall, witnesses on a panel of the National Institutes of Health testified about their first hand accounts of genetic discrimination. Even though they will never develop the disease, Heidi Williams' children were denied health insurance coverage because they are carriers for a genetic disorder. Phil Hardt's children feared discrimination so much that they sought genetic tests in secret, paying out of their own pockets and not using their real names.

During hearings in the House, Gary Avary told how his employer, the Burlington Northern Santa Fe Railroad, required any employee with carpal tunnel syndrome to have a genetic test. Employees who refused were threatened with penalties, or even the loss of their jobs.

Terri Seargent was discharged from her job at a private firm in North Carolina in 1999, 2 months after beginning very expensive treatment for a disease that was covered by her employer's health insurance plan. Since joining her employer in 1996, she had received positive annual performance ratings and generous annual raises. Yet she lost her job soon after the special treatment began.

Fear of genetic discrimination also prevents people from having genetic tests for hereditary cancer, which would provide them with life-saving information to help them prevent the onset of cancer or increase the likelihood of early diagnosis. In a recent study, only 57 percent of women decided to undergo testing for mutations in the breast cancer genes and only 43 percent of those at risk for colon cancer chose to have genetic testing. People fear cancer, but many also fear losing their jobs or their health insurance even more.

Experts in genetics are united in calling for strong protections to prevent this misuse and abuse of science.

The HHS advisory panel on genetic testing—with experts in law, science, medicine and business—has recommended unambiguously that federal legislation is needed to prohibit discrimination in employment or health insurance based on genetic information.

Francis Collins, the leader of the NIH project to sequence the human genome, said:

> Genetic information and genetic technology can be used in ways that are fundamentally unjust . . . Already, people have lost their jobs, lost their health insurance, and lost their economic well-being because of the misuse of genetic information.

Genetic tests are becoming even cheaper today and more widely available. If we don't ban discrimination now, it may soon be routine for employers to use genetic tests to deny jobs to employees, based on their risk for disease.

When Congress enacts clear protections against genetic discrimination in employment and health insurance, all Americans will be able to enjoy the benefits of genetic research, free from the fear that their personal genetic information will be used against them.

If Congress fails to guarantee that genetic information is used only for legitimate purposes, we will squander the vast potential of genetic research to improve the nation's health.

Effective enforcement of the ban will also be essential. It makes no sense to enact legislation giving the American people the promise of protection against this form of discrimination, and then deny them the reality of that protection.

President Bush recognizes the seriousness of this problem, and supports a ban on genetic discrimination. As he said on June 26, 2001, ''genetic information should be an opportunity to prevent and treat disease, not an excuse for discrimination. Just as our nation addressed discrimination based on race, we must now prevent discrimination based on genetic information.''

I commend the President for his support, and I look forward to working with the administration to see that a strong bill on genetic discrimination is signed into law this year.

It is time for Congress to act, and I urge the Senate to pass this bipartisan bill with the broadest possible support.

I ask unanimous consent to have printed in the RECORD the strong statement of the American Academy of Pediatrics. They are concerned that discrimination will deny families access to health insurance for their children.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

AMERICAN ACADEMY OF PEDIATRICS,
Elk Grove Village, IL, February 14, 2005.

Hon. EDWARD KENNEDY,
Ranking Member, Committee on Health, Education, Labor and Pensions, Washington, DC.

DEAR SENATOR KENNEDY: The American Academy of Pediatrics, an organization of 60,000 primary care pediatricians, pediatric medical subspecialists and pediatric surgical specialists dedicated to the health and well being of all infants, children, adolescents, and young adults, would like to express its strong support for S. 306, the Genetic Information Nondiscrimination Act.

The American Academy of Pediatrics strongly supports efforts to enhance, improve and expand the ability to provide newborn screening, counseling and health care services. Advances in genetic research promise great strides in the diagnosis and treatment of many childhood diseases, detected as early as the newborn period or later in childhood. With early identification and timely intervention, we have the ability to significantly reduce morbidity, mortality and associated disabilities in infants and children affected with certain genetic, metabolic and infectious conditions.

With these opportunities, however, we also have a responsibility to ensure that careful consideration is given to the testing and screening of children so that emerging technologies are used in ways that promote the best interest of patients and their families. Potential benefits of genetic screening and testing are limited by the risks of harm that may be done by gaining certain genetic information, including potential for discrimination by insurers and employers. Furthermore, the American Academy of Pediatrics is concerned that genetic discrimination is a barrier for families to access health insurance for their children. More than 9 million children are currently uninsured in this country, and millions more are underinsured. We will never achieve our goal of ensuring that every child has health insurance coverage if genetic discrimination is permitted.

For these reasons, the American Academy of Pediatrics supports passage of S. 306, which would protect children and families from genetic discrimination in health insurance and employment. The American Academy of Pediatrics commends you for your timely action on this legislation, and looks forward to working with you toward its passage into law.

Sincerely,
CAROL BERKOWITZ, M.D.,
President.

Mr. KENNEDY. Mr. President, the American Cancer Society supports our legislation. The American Osteopathic Association says access to health care should not be restricted on the basis of genetic testing. The American Society for Human Genetics; the biotechnology industry—all have made very important statements in support of this legislation, along with other organizations.

We suggest, for those who are following this debate, to refer to a July 2004 report titled ''Faces of Genetic Discrimination'' from the Coalition for Genetic Fairness. This is a wonderful document that I think has so much information. It lists the wide range of groups supporting this legislation, including the American Academy of Pediatrics, the American Cancer Society, the American Medical Association, the American Osteopathic Association, the American Society for Human Genetics, the Biotechnology Industry Organization, Hadassah, the Juvenile Diabetes Research Foundation, the National Organizations of Rare Disorders, the National Workrights Institute, and the Society for Women's Health Research. It is a wonderful document that outlines the history and the opportunity of genetic research and technology.

Mr. ENZI. I yield 10 minutes to the Senator from Maine, Ms. SNOWE.

The PRESIDING OFFICER. The Senator from Maine.

Ms. SNOWE. Mr. President, I thank, first and foremost, the chairman of the Health, Education, Labor, and Pensions Committee, the HELP Committee, Senator ENZI, for his commitment and for moving this legislation out of the committee as the first of a group of health-related bills to be referred out of his committee as the new leader, the chair of this committee this year. I thank the chairman for doing so and I express my gratitude to him. This sends a very significant message to the House of Representatives of the importance and the value of this initiative. Senator ENZI not only as chair of this committee but previously was instrumental for participating in negotiations for more than 16 months to help fashion a consensus on the legislation now before the Senate and that was enacted through his committee, as well. I thank him for his leadership that made it possible to bring this legislation to the Senate.

I also express my appreciation to my colleague on the other side of the aisle, Senator KENNEDY, as ranking member of the HELP Committee, who has been a longtime champion of protection for an individual's private health information, dedicating himself over the past year and a half toward forging a bipartisan solution to this issue.

Also, as a result of the considerable yeoman efforts of the Senate majority leader, a major breakthrough occurred on this legislative initiative. The Senate majority leader agreed to the necessity of this legislation the last few years in making it possible. It was due in large measure to his stalwart efforts in working with me and others such as

Senator ENZI and Senator KENNEDY, and Senator JEFFORDS, who has been a collaborator on this issue for 8 years, which made it possible to forge this bipartisan effort. I thank the Senate majority leader because he, obviously, was pivotal in ensuring we could pave the way for the passage of this legislation as we did last fall in October with unanimous support. Hopefully, we will receive the same support for this initiative today, as well. I thank the leader for giving his support and vital efforts to making this possible. I thank him for his vision and tireless support.

Also, I thank Senator GREGG who last year dedicated significant time and staff resources when he was the previous chair of the committee and for helping to make it a priority of his committee last year when he chaired the HELP Committee.

Also, Senator DODD has been deeply committed to fighting to ensure that consumers have the strongest possible protections afforded to them with the passage of this legislation.

Since April of 1996 when I first introduced the Genetic Information Nondiscrimination Health Insurance Act, along with my colleague, Senator JEFFORDS, science has continued to hurtle forward, further opening the door to early detection and medical intervention through the discovery and identification of specific genes linked to diseases such as breast cancer, Huntington's disease, glaucoma, colon cancer, and cystic fibrosis.

We recognized in 1996 with progress in the field of genetics accelerating at a breathtaking pace that we must ensure the fast arriving scientific advances in treatment and prevention of diseases do not advance a new basis for discrimination. As with countless scientific breakthroughs in history, the eventual completion of the genome project not only brought the prospects of medical advances such as improved detection and earlier intervention but also the potential for harm and abuse.

Every day since that breakthrough, the American people have been vulnerable to this type of discrimination. The everyday risk of discrimination has inhibited the full use of this vast, still untapped reservoir of knowledge.

As I have said previously, the fear of repercussions from one's genetic makeup was brought home to me through the real-life experience of one of my constituents, Bonnie Lee Tucker. In 1997, Bonnie Lee wrote to me and told me she was too afraid to have the BRCA test for breast cancer, even though nine women in her immediate family were diagnosed with breast cancer and she herself was a survivor. She was worried that knowledge might damage her daughter's ability to obtain insurance in the future.

Bonnie Lee was not alone in her fear. When the National Institutes of Health offered women genetic testing, nearly 32 percent of those who were offered a test for breast cancer risk declined to take it, citing concerns about health insurance discrimination.

What value is scientific progress if it cannot be applied to those who would most benefit?

I recall the testimony before Congress of Dr. Francis Collins, the Director of the National Human Genome Research Institute, without whom we would not have reached this day. In speaking of the next step for those involved in the genome project, he explained the project scientists were engaged in a major endeavor to "uncover the connections between particular genes and particular diseases," to apply the knowledge they just unlocked. In order to accomplish this, he said:

> We need a vigorous research enterprise with the involvement of large numbers of individuals, so that we can draw more precise connections between a particular spelling of a gene and a particular outcome.

With all this tremendous potential, this effort cannot reach its full promise if patients have a reason to feel repercussions of genetic test results. Given the advances in science, there are two distinct concerns at hand. The first, of course, is discrimination by health insurance. The second is employment discrimination based simply upon an individual's genetic information. This legislation addresses both of these issues based on the firm foundation of current law.

With regard to health insurance, these are clear and familiar issues which the Senate has previously debated in the context of larger patient privacy issues. Indeed, as Congress considered what now is known as the Health Insurance Portability and Accountability Act of 1996, we also addressed medical information privacy. Moreover, any legislation that seeks to fully address these issues must consider the interaction of the new protections with the privacy rule which was mandated by HIPAA and our legislation which accomplishes just that.

Specifically, we clarify the protections of genetic information as well as the request to receive a genetic test from being used by the insurer against the patient. The fact is, genetic information only detects the potential for genetically linked disease or disorder. And potential does not equal a diagnosis of disease.

It is critical this information be available to health care professionals to diagnosis or treat an illness. Without the protection which this bill offers, patients will not be able to take advantage of our ever-increasing knowledge of genetics.

On the subject of employment discrimination, unlike our legislative history in debating health privacy matters, the issue surrounding protecting genetic information from workplace discrimination is not as extensive.

To that end, our bipartisan bill institutes these protections in the workplace. There should be no question of this necessity. Indeed, it is an imperative. The threat of employment discrimination is not hypothetical, and therefore it is essential that we take this information off the table, so to speak, before such abuse becomes widespread. While Congress has not yet debated this specific type of employment discrimination, we have considerable case law and legislative history on which to build.

Indeed, as we considered the necessity for this type of protection, we agreed that we must extend current discrimination protections to genetic information. We reviewed current employment discrimination law and possible remedies for instances of genetic discrimination and whether they should differ from existing remedies under current law, such as the American Disabilities Act or the EEOC. This bill creates new protections by paralleling current law and clarifying the remedies available to victims of discrimination. So regardless of their religion, race, or DNA, people will all receive the same protections under the law. There will be an across-the-board Federal standard which becomes so critical to fundamental protections under the law.

It has been more than 4 years since the completion of the working draft of the human genome. Like a book that sits unopened, the wonders of the human genome are useless if it is compromised by the fear of discrimination. This legislation is a shining example of what can be accomplished when we set aside partisan differences in order to address the challenges facing the American people.

I urge my colleagues to support this legislation. Again, I thank the chair of the committee for his instrumental and pivotal leadership to bring this legislation to the floor.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Wyoming.

Mr. ENZI. Mr. President, I thank the Senator from Maine for her persistence, her enthusiasm, her perseverance, and particularly her reasonableness in dealing with this issue, recognizing how important it is and how important it is to get it done now.

I say to the Senator, you have just done tremendous work at pulling everybody together. I recognize that effort. Without your efforts, this would not have been possible. So I thank you for bringing it to this point.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I yield myself 4 minutes.

I had mentioned earlier the great leadership that the Senator from Maine has been providing. She has been a noble soul since the very cold winter when she first introduced this legislation. Now she deserves great credit that we are at point.

Just on that point, I wish to recognize Representative SLAUGHTER in the House of Representatives. She has been a great advocate over a long period of time. I want the Senate Record to reflect that.

I also want the Record to reflect the fact that President Clinton issued an Executive order banning genetic discrimination against Federal employees in the year 2000. It was limited, obviously, with his authority and power, to just Federal employees but, nonetheless, it was a significant step at that time.

I also draw attention to the strong support President Bush has given to this undertaking. In a radio broadcast, actually in 2001, he stated:

> Genetic discrimination is unfair to workers and their families.

In that same radio broadcast he also stated:

> To deny employment or insurance to a healthy person based only on predisposition violates our country's belief in equal treatment and individual merit.

We also have the strong letter of support from the Secretary of HHS, Tommy Thompson, from last year. There is also the statement from the administration, this year, in support.

I just mention one final point. Out at the National Institutes of Health, where they really do the best of the research—it is really the gold standard of research—they have important genetic research out there. In their information sheet, they have what we call the consent form. This is the consent form that any individual who wants to participate in genetic research at NIH signs. It says:

> We will not release any information about you or your family to your insurance company or employer without your permission. However, instances are known in which genetic information has been obtained through legal means by third parties. This may affect you or your family's ability to get health insurance and/or a job.

Here is the premier workplace in the world doing the most significant, important research in genetics, which is so incredibly important, just raising this as a very real potential danger. It will not be a danger when we get this legislation passed into law.

Finally, I also commend my friend, and our former leader, Senator Daschle, who had introduced important legislation in 1997 on this very subject matter. He was one of the early leaders in this battle.

Mr. President, I think we have speakers who are on their way. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ENZI. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Ms. SNOWE). Without objection, it is so ordered.

Mr. ENZI. Madam President, I yield 3 minutes for purposes of a colloquy with my friend, the Senator from Oklahoma.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. COBURN. Madam President, I thank Senator ENZI and all those who have worked hard on this bill. I have a few questions in terms of my concern about prenatal testing.

Do I understand from the remarks of the Senator from Wyoming that this legislation is directed against a wide range of cases with which individuals of families may be discriminated against in health insurance coverage based on the results of genetic tests conducted on any family member?

Mr. ENZI. Yes, that is correct.

Mr. COBURN. One example of such discrimination cited in the past is based on prenatal testing. A 1996 report by the National Academy of Sciences cited a case in which a California HMO threatened to deny health care coverage to a child because that child, before being born, antenatal, tested positive for a genetic defect associated with cystic fibrosis. Would this legislation protect against this type of discrimination?

Mr. ENZI. Madam President, yes. In the type of situation described, the legislation would prohibit the insurer from discriminating against both the mother and the child because of the result of the genetic test of the child. It is the intent of the legislation to prohibit insurers from denying coverage to either a child or the child's family members based on the results of prenatal testing.

Mr. COBURN. I thank the Senator. Based on that interpretation and my understanding that the Senator will ensure the conference report includes language that makes clear that a dependent child will be protected from discrimination under this legislation regardless of when the genetic information was acquired, including any information gained from ante- and prenatal testing, I will support the bill. I congratulate Senator ENZI and thank him for his hard work and for the colloquy.

Mr. ENZI. Madam President, I thank the Senator from Oklahoma for his careful concern and the depth with which he has been into the bill and the vast knowledge he has as a doctor which helps to get all those different perspectives that bring bills together. We thank him for his efforts.

I yield myself 6 minutes.

Answering the question of ''why do this bill now'' is very important. The most persistent question from the business community about this bill, and the most reasonable, is why now? Why should we create a new basis for lawsuits for a subject area where there is no record of abuse, on information that employers do not want or need, to prevent fear over hypothetical situations? Let me address this critical question head on because I asked it myself at the onset, and I have answered it to my satisfaction.

First, we are not legislating in the area of the unknown but in the area of hope. Genetic information holds the key to better diagnosis, better cures, better lives for all of the world's population. We have determined that a serious impediment to this progress is fear, fear that the information derived from the genetic tests will be used to harm the individual, fear that the usage of the information is creating reluctance and that it is leading to refusal to take tests. Every refused test is progress delayed for all mankind because it is only through testing that scientists will amass the knowledge to find the diagnostic tools and cures we so desperately desire. Considering the potential for discovery and the employer protections we have built into this legislation, I am confident we have struck the right balance. But the question remains, why now? Why not wait for greater proof of fear and abuse?

There are several reasons. For well over half the States, it is not too early to take action. We are seeing developed a hodgepodge of State laws that address the handling of genetic information and the banning of its use in the workplace and in insurance. There are patterns to these laws, but there are enormous inconsistencies. Likewise, Federal law is inconsistent. The Americans with Disabilities Act covers genetic matters if they are ''regarded as'' a disability, but the determination is subjective and likely to evolve on a case-by-case basis. The Civil Rights Acts of 1964, as amended in 1991, are also implicated.

In short, many questions remain over what is and what is not covered by existing Federal and State law. And history has taught us that unanswered questions breed lawsuits. With this legislation, we seek to answer questions and prevent litigation. We have the opportunity to write a clearly defined set of rules for the collection and preservation of genetic information and carefully proscribe its usage. That will prevent mistakes and abuse. Before anyone develops the desire or reason to harm our fellow citizens, a clear-cut set of rules established at the infancy of this amazing field of science will do greater good for businesses and insurers and the public than waiting for common law to develop.

I remind my colleagues and my friends in the private sector that lawyers are already looking for opportunities to sue for genetic discrimination under State laws, under the Americans With Disabilities Act, and under many other laws written for other purposes—hoping to cash in on this developing area of the law. This is one area where it is not appropriate to let nature take its course. I am not willing to abdicate this policymaking function and wait for the courts to decide on how laws should apply to a field of science that didn't exist when the laws we are talking about were written. That is the job of Congress.

It is also important to observe that there are few victims as of yet in this field of science and law, and that is a good thing. We want to keep it that way. The rules established in the Genetic Information Nondiscrimination

Act are clear and fair. We distinguish between the legitimate and illegitimate use of genetic information in the workplace. We ensure confidentiality and make it clear how employers are to do that. And from my perspective, most importantly, we have included every essential safeguard and exception to prevent this law from becoming a litigation nightmare for businesses.

In conclusion, let me state that it is no coincidence that the first major civil rights bill of this new Congress deals with a truly 21st century issue. While genetic discrimination may not be widespread at this time, this legislation ensures that discriminatory practices will never become common practice.

From the past, we have learned from employees, employers, insurers, and others all work best together when the rules are clear and opportunities for personal achievement and health are available. This legislation tells everyone what is expected of them and avoids the trip wires and uncertainty of some of our existing laws.

I reserve the remainder of my time. I suggest the absence of a quorum and ask unanimous consent that the time be equally divided.

The PRESIDING OFFICER (Mr. COBURN). Without objection, it is so ordered.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ENZI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ENZI. Mr. President, I have here a copy of the Genetic Information Nondiscrimination Act 2003, which was submitted by Senator GREGG, who was chairman at that time. We did not do a new report this time. The reason we did not is because the bill has not changed between then and now.

I strongly urge my colleagues to consult this report, Senate Committee Report 108–122, not only because of its excellent background and analysis, but also because it clearly illustrates much of the thinking and work behind why this bill was drafted as it was.

Mr. President, I ask unanimous consent that a Statement of Administration Policy, issued today, regarding genetic information be printed in the RECORD. The administration favors enactment of the statement this legislation and this statement gives some explanation.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC, February 16, 2005.

STATEMENT OF ADMINISTRATION POLICY, S. 306—GENETIC INFORMATION NONDISCRIMINATION ACT OF 2005

The administration favors enactment of legislation to prohibit the improper use of genetic information in health insurance and employment. The administration supports Senate passage of S. 306 as reported, which would prohibit group health plans and health insurers from denying coverage to a healthy individual or charging that person higher premiums based solely on a genetic predisposition to developing a disease in the future. The legislation also would bar employers from using individuals' genetic information when making hiring, firing, job placement, or promotion decisions.

The mapping of the human genome has led to more information about diseases and a better understanding of our genetic code. Scientists are pursuing new diagnostics, treatments, and cures based on this information, but the potential misuse of this information raises serious moral and legal issues. Concern about unwarranted use of genetic information threatens access to utilization of existing genetic tests as well as the ability to conduct further research. The administration wants to work with Congress to make genetic discrimination illegal and provide individuals with fair, reasonable protections against improper use of their genetic information.

Mr. ENZI. Mr. President, I yield the floor, reserve the remainder of the time, and suggest the absence of a quorum, and ask that the time be equally divided.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GREGG. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GREGG. Mr. President, I ask unanimous consent I be allowed to speak for up to 10 minutes on the bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GREGG. Mr. President, first I rise to congratulate the Senator from Wyoming for assuming the chairmanship of the HELP Committee and moving forward on this exceptionally important piece of information, the Genetic Information Nondiscrimination Act of 2005. Quickly moving this legislation forward shows the priority the Senator from Wyoming places on straightening out our medical situation in this country, making delivery of health care more affordable, more thoughtful, and in this case free of discrimination.

This is the first civil rights act, really, of this century, for all intents and purposes. It is a major commitment to people of our country that they will not be discriminated against on the basis of their genetic code. Last year we celebrated the discovery by Dr. Watson and Dr. Crick of the double helix. Then we also celebrated the fact that NIH had mapped the human genome, that the DNA project was completed. Those were huge milestones which have had an exceptional impact on the quality of health care in this country. They will continue to have an expanding impact; the breadth and depth of influence on how we deliver health care and how people's health care is affected within our Nation cannot even be predicted. That is because, if you can define what your genetic code is, you can obviously make huge strides toward curing diseases which might potentially afflict anyone.

But this new science also created issues for us, public policy issues. One of the big public policy issues it created is the issue of discrimination based on your genetic code. Everybody has this problem—or has this benefit—or has this situation. We all have genes. This is a universal issue. It is something that impacts everyone.

So Congress has taken a long and indepth look at how we should address this from a public health policy standpoint, working in a very bipartisan way under the leadership of Senator ENZI. Prior to that, I was chairman of this committee and we worked on this very aggressively with help across the aisle, of course, of Senator KENNEDY and members of the Democratic leadership on the committee.

Then, outside the committee itself, Senator FRIST and Senator SNOWE and others have played a major role in making sure that what we did in this area was thoughtful and had a purpose and accomplished the goal. The goal was to make sure that discrimination did not occur in the science of the human genome and that the science of the use of this information that genetics was going to produce could be best implemented so we didn't end up retarding the development and implementation of new cures. The goal was to address the concerns of people relative to their genetic history and the potential it has for them as they move forward in their lives so they are not impacted negatively by acts of discrimination which might chill people's willingness to use this genetic information or even obtain this genetic information in their interfacing with the health community.

This act is an effort, after a tremendous amount of work, to thoughtfully and intelligently address the issue of how we effectively promote the use of genetic information. It actually encouraged people to take advantage of this new science rather than have an atmosphere where people are limited or are discouraged from taking advantage of this new science.

We know, unfortunately, that the potential is there, and it has actually occurred. We have instances—a few, I admit, but there are specific instances—of discrimination occurring as a result of the person's genetic history or potential genetic history in the area of employment and in the area of health insurance. This is where this bill addresses those concerns.

It specifically addresses the issue of health insurance underwriting, and it specifically addresses the issue of employment. Its impact is that health insurance plans will not be able to deny eligibility for an employee into a health plan based on genetic information, and it prohibits health insurance plans from charging higher premiums based on an individual's, or his or her family's, genetic information. It is very important.

It also does not allow an individual health insurance employer to request genetic information or to use a person's genetic information in their decisions on the hiring and firing of an individual.

It recognizes that all individuals, whether they are healthy or sick, and all medical information, whether genetic or otherwise, should be afforded the same protection under the law. And that is a critical point.

The practical implication of it is, if you have a family history where you sense or may think there may be a problem that you have because of your genetic makeup and you are not going forward and being tested, your willingness to see a doctor to see if that genetic problem may actually exist for you is not going to be limited because you are not going to be concerned with the fact, if that information comes forward or is obtained that it might be used to limit your ability to get a job, keep a job, or get health insurance, or keep health insurance, or, alternatively, that your children or children's children might also, if the genetic information is confirmed, be subject to discrimination for work or for obtaining insurance.

It will allow people to be much more aggressive in using this brand new science to assist them in getting their health in order and making sure that people and their children are properly screened for what can be produced from genetic information.

This is going to be such a hugely valuable tool for our society and for people. There should be nothing in our society which says to people you really can't afford to do this, because if you take this type of test, you see this doctor, if you have this type of review, you are going to find out something that might lead to your quality of life being dramatically reduced because you lose your job or you lose your insurance.

The legislation is appropriate. Those who questions its need, do so out of legitimate concern that it is a new Government law, new Federal legislation, and they do not see that the problem exists, I guess, in many instances or, if it does exist, they don't think it is significant enough to address. To those folks, I would simply say this: Yes, the problem does exist. Yes, we have instances of discrimination occurring both in the workplace and in the insurance industry. They have been limited but, more importantly than that, this is a science which holds such tremendous potential for dramatically improving the way we deliver health care as a society that we do not want anything to stand in its way to chill its use or to undermine the willingness of Americans to participate in studies of themselves or their families or their genealogy which might undermine the advantage which this new science gives them in getting better health care.

It is an appropriate piece of legislation. I think it puts the emphasis in the right place, which is reasoned and appropriate in how we handle genetic information and we avoid discrimination in the use of that information.

Again, I congratulate Senator ENZI for setting this out as the first item he has moved out of the HELP Committee under his chairmanship. It reflects his commitment to making sure health care in this country is not only of a better quality, but that the science that backs up health care continues to be robust as it pursues cures for all Americans.

I yield the floor.

Mr. ENZI. Mr. President, I thank and congratulate the Senator from New Hampshire, Mr. GREGG, for his efforts on this bill. He was actually the committee chairman who made sure that all the parties came together, which around here is no small task, and came up with this package that does what our purpose was. He did it with such diligence, care, and completeness.

Rather than take the time to put out a new committee book about the bill, we used his book. It gives an explanation, and it also shows that the bill didn't need to be changed from what he had. So it is actually Senator GREGG's efforts that brought this bill to the floor and brought it in this complete fashion and moved it along so quickly. We thank him for all of his information and help.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, we are now considering a bill that I am pleased to have cosponsored and which I worked on with my colleagues for a number of years, the Genetic Information Nondiscrimination Act of 2005.

I thank our chairman, Senator ENZI, for expeditiously bringing this to the floor and guiding it, hopefully, to early passage tomorrow.

I also compliment Senator SNOWE on being the chief sponsor of this bill, and for being in the forefront of this fight to protect people who want to understand perhaps the predispositions they might have for any illnesses because of their genetic history.

As we know, the bill makes it illegal for an employer or health insurer to discriminate against an individual based on genetic information.

The good news is that advances in genetics have opened major opportunities for medical programs. We are now able to diagnose and treat diseases earlier and more efficiently than ever before.

Again, my deepest thanks to Francis Collins for his great leadership at the National Human Genome Institute, for guiding and directing the mapping and the sequencing of the human gene. He has provided great leadership. I have followed it since Dr. Collins first took over, I think back in 1993, if I am not mistaken. It has just been amazing to watch this happen.

Some people said it was going to take 15 to 20 years to get this done, but thanks to Dr. Collins and his leadership and the great staff that he assembled at the National Human Genome Institute, we completed the entire mapping and sequencing by April of 2003.

We have this great information. You can go right on the Internet and you can find it all right there. It is all out there for the entire world to use. Quite frankly, they are using this genetic information on the human gene to understand and to do more research into the background of many of our illnesses that have genetic markers for them.

As a result, we are now able to diagnose and treat diseases earlier and more efficiently than ever before. I can daresay that in the years to come we are going to have more and more breakthroughs by scientists who are using this toolbox—as I have often called it—of genetic information that we have derived from the mapping and sequencing of the human genome.

That is the good news. The bad news is that this same genetic information could be used by employers or insurance companies to discriminate in hiring or in insurance decisions. Health insurers could charge higher copayments or deny coverage altogether to individuals who have a genetic predisposition for certain diseases.

When we passed the Americans With Disabilities Act in 1990, we had little understanding of the range of genetic information that could be used by employers and health insurers to discriminate.

The problem is that the ADA does not expressly address genetic discrimination. What is more, the Supreme Court has made it more difficult to apply the ADA to discrimination based on the genetic information.

I think there have been mistaken decisions of the Supreme Court, but, nonetheless, they have spoken.

It is incumbent upon us to pass legislation to clarify this. That is what this bill is all about—prohibiting enrollment restrictions and premium adjustments based on an insurer's ability to determine someone's genetic makeup. The bill prohibits employers from discriminating and hiring discrimination.

We want people to access the diagnostic tools scientists and researchers have and will come up with in the future so they can take steps to protect themselves to prevent perhaps the onset of an illness that can be caused by a genetic predisposition. For example, there could be a genetic marker, as we know, for breast cancer. Both of my sisters passed away from breast cancer at too early an age. They had families and their children are grown up; now they have children who are growing up. Of course, there is a great concern among them about the genetic background of their mother, or grandmother in this case. They should, if they want to, be able to access information to better protect themselves. They should know if they get early screening, early mammograms, and whether they might want to control their diet so they would be more acutely aware the earlier they detected this, if, God forbid, it should happen to one of them, that they would be able to address that and to live full and meaningful lives.

We know if breast cancer is addressed early, the chances of someone surviving and living a whole, full life is great. So many people do not detect it early is the problem. We want people to access the diagnostic tools and not be afraid that if they get this information, they might lose their job, their health care premiums would go up, that sort of thing. That is what this bill is about.

I thank my colleague and my friend from Wyoming, the chairman of our committee, for bringing this expeditiously to the Senate floor. Hopefully, the House will take steps also to pass it very soon, and we can send it to the President. It is incumbent upon the House to take prompt action and get it to the President's desk as soon as possible.

WELLNESS

While I am here, I diverge a little bit, but not a lot, to briefly mention an issue that does not relate directly to the provisions of the bill but does relate to the issue of prevention and the issue of health and how much money we are spending in this country. I will talk about the issue of wellness and the role that Government can play in promoting wellness and prevention in order to help address a crisis in our health care system, the crisis of exploding costs.

As the Senate takes important bipartisan steps forward to prohibit discrimination based on genetic information, as we are doing here today, we can and must take bipartisan steps forward to promote wellness. We have heard a lot recently about the projected shortfall in Social Security over the next 75 years of $3.7 trillion. That is a lot of money in anyone's book. That is over the next 75 years. That pales compared to the shortfall in Medicare, which is estimated to be $17 trillion. That is the real crisis. Social Security is not a crisis; the real crisis is Medicare.

It is not only the Federal budget that is being eaten alive, it is State budgets, family budgets, it is corporate budgets. Look at the numbers: Some 75 percent of health care costs in the United States are accounted for by chronic conditions and diseases, many of which are preventable. Last year, nationally, we spent more than $100 billion on obesity alone. Medicare and Medicaid picked up almost half that tab. There was an address the other day by the chairman of General Motors talking about what it is doing to their company: $1,500 of the cost of every car they produce is now because of health care insurance costs.

It is unwise uneconomic and totally unsustainable. If we are going to control Medicare and Medicaid costs and private sector health care costs as well, we need a significant, even a radical change of course in our country. We need a fundamental paradigm shift away from a sick care system. That is what we have now. In other words, if you get sick, you get care, but there is precious little out there now that encourages and gives incentives to stay healthy in the first place. We need a paradigm shift toward preventing disease, promoting good nutrition, encouraging fitness and wellness. This will be good for the physical health of the American people, and it will be good for the fiscal health of government, corporations, private businesses, and family budgets.

I believe strongly in personal responsibility. I believe people should take charge of their own health. I also believe in corporate responsibility, community responsibility, and government responsibility. I make no bones about it: It is past time for the Federal Government to step to the plate in a very robust way.

To that end, I introduced the HELP America Act last year, otherwise known as the Healthier Lifestyle and Prevention Act. This legislation takes a comprehensive approach to wellness and prevention. It provides tools and incentives to schools, employers, and communities. It aims to create better nutrition, physical activity, and mental health opportunities for kids in schools. I saw some data recently that said that 80 percent of elementary school kids in America today get less than 1 hour of physical exercise a week in school. That is unconscionable. We have to have better physical activity and nutrition for our kids in school.

The bill creates better nutrition, physical activity, and mental health opportunities for kids in school. It gives the Federal Trade Commission authority to regulate unfair marketing to children, especially junk food. It provides incentives to build paths, safe sidewalks and bike paths. It requires nutrition labeling on menus in chain restaurants. It does a lot more than that.

The HELP America Act is comprehensive. It is ambitious. But it is only at the beginning of a long legislative process. I am confident over time we can build a bipartisan consensus to move the Federal Government toward wellness, prevention, away from sickness, more in keeping people healthy. We have already made some progress.

Several elements of the HELP America Act passed late last year. For example, we secured $440 million for research at the National Institutes of Health into the causes and cures of obesity. We sent more than $50 million in grants to States to fund programs to address nutrition, physical activity, and obesity. We secured some $114 million for tobacco prevention and cessation activities at the Centers for Disease Control and Prevention. We also expanded the fresh fruit and vegetable program.

Three years ago when we passed the farm bill, I put a provision in there to test a theory. My theory was if we gave kids in school free fresh fruits and vegetables—not just at lunch but anytime during the day—they would eat them, they would like them, they would not be putting money in the vending machine to buy junk food, they would study better, they would be better behaved, and everyone would benefit. So we tried out the theory. We got a small amount of money in the farm bill. We took 4 States, 25 schools in each State, 100 schools, and 1 Indian reservation in Arizona. We provided enough money to bring free fresh fruits and vegetables into these schools. What has happened? In each one of those schools, it has been a resounding success. Not one of those schools has asked to be taken off the program. In fact, every single one of them has asked, please, don't take this away.

We have now gone from four States to nine States. We have gone from 100 schools to a little over 200 schools. It is growing. Visit one of these schools where these kids get the free fresh fruits and vegetables.

These little kids in school, at about 9:30 in the morning, get the ''growlies,'' they get a little antsy. If they have an apple to eat or an orange or a clementine or kiwi fruit or a banana or grapes, or they get fresh broccoli in the afternoon or cauliflower or carrot sticks, you would be amazed how much they eat of these fruits and vegetables.

As I said, the teachers love it. The principals find it is a great system. Even parents now are weighing in. Parents love it. Kids are even going home and asking their parents to buy these at grocery stores. Again, I mention that because this is getting to the early part, getting kids to eat the proper foods, getting them tuned in to fresh fruits and vegetables at an early age. But there is so much we have to do. It is time for the Federal Government to start moving in that direction. If we do not, we are never going to be able to save Medicare and Medicaid, we are never going to be able to pay for it. It is going to bust us.

So we have to start preventing, we have to start keeping people healthy in the first place. That is what this is all about—so that we have taken some positive steps forward. They are small steps, kind of baby steps, but I am convinced there is a solid, bipartisan consensus to pursue this course of wellness and prevention. I know that Senator FRIST has been one of the great leaders in this area of prevention and wellness. I look forward to working on this agenda with my colleagues of both parties in the months ahead. I hope we can get a strong, bipartisan effort.

I hope the President, who, by the way, is a great example of physical fitness—though I may have some disagreements with the President on some things, that is one thing I agree with him on. He is good at physical fitness. He does not smoke. He does not drink.

As far as I know, he eats well and exercises well.

WISHING SENATOR SPECTER WELL

Mr. President, I understand this is now on the news wires, so I want to comment on something that has just come to my attention this afternoon. I received a call from one of the best friends I have ever had, a close friend here in the Senate, someone whom I have admired for his personal qualities as well as for his senatorial qualities for so many years. I have been privileged to work with him side by side now going back almost 20 years.

I received a call a little while ago from Senator SPECTER of Pennsylvania, who informed me that doctors at the University of Pennsylvania Hospital had diagnosed him with Hodgkin's disease. Well, it kind of took my breath away. There is no one for whom I have a higher regard than Senator ARLEN SPECTER. I think how hard he has worked to double the funding for NIH for basic research, and then to have this happen. But he assured me that it is at an early stage. The doctors have said he has an excellent chance of full recovery and will be back here very soon after our break next week. He will have to undergo some treatments, but I understand the doctors say that ARLEN SPECTER has an excellent chance of full recovery.

I know all of my colleagues wish him the best. Our prayers are with him. We know he is a strong person. He has a strong will. He is a person of strong faith. And we know that his will and his faith will carry him through. I know we will have Senator SPECTER back here with us leading the charge to make sure we address the real needs of health care and biomedical research, to make sure we fulfill our obligations in education in this country, where he has been a great leader.

Again, Mr. President, we wish Senator SPECTER well, a full and speedy recovery, and look forward to having him back here as soon as possible.

With that, Mr. President, I yield the floor.

TITLE XVIII

Mr. GRASSLEY. Mr. President, it has come to my attention that S. 306 includes a provision to amend title XVIII of the Social Security Act. As chairman of the committee, I am obligated to point out that the Finance Committee has primary jurisdiction over title XVIII, as amended. The provision in S. 306 that is within the jurisdiction of the Finance Committee amends title XVIII relating to Medicare supplemental policies. I ask Chairman ENZI to acknowledge that the Senate Finance Committee has jurisdiction over title XVIII of the Social Security Act and ask that he endeavor to consult on matters before the Health, Education, Labor & Pensions Committee that touch on the Senate Finance Committee's jurisdiction.

In order to avoid unnecessary confusion as to the jurisdiction of the Finance Committee or further delay in the consideration of this bill, I would agree to accommodate your request to withhold any objection to the Senate's consideration of S. 306 with the acknowledgment that this provision and title XVIII generally are in the jurisdiction of the Finance Committee. This does not represent any waiver of jurisdiction on the part of the Finance Committee on this subject.

I ask the chairman of the HELP Committee, Senator ENZI, whether he would agree to this request.

Mr. ENZI. Mr. President, I tell my friend that I do acknowledge that title XVIII of the Social Security Act is within the jurisdiction of the Senate Finance Committee. The matter before the Senate makes amendments to the Employee Retirement and Income Security Act and the Public Health Service Act. The section to which you have raised concerns was included as a conforming amendment to ensure consistency in Federal policy. I want to reassure my friend that I have every intention of respecting the jurisdiction of all Senate committees and will endeavor to consult with him on all matters before my committee that touch on the jurisdiction of the Senate Finance Committee. I ask my friend to provide me the same courtesy.

Mr. GRASSLEY. I agree and will also endeavor to consult with the Senator on matters before the Senate Finance Committee that are in the jurisdiction of the HELP Committee.

Mr. JEFFORDS. Mr. President, all of us are privileged to be living in an era of unprecedented scientific discovery in the biological sciences. Since 1953, when James Watson and Francis Crick first identified the structure of DNA or the double helix we have relentlessly increased our ability to decipher an individual's hereditary information. At the time of their discovery, Watson and Crick said that they had ''found the secret of life'' and to be certain, life, as we know it, has not been the same since.

Today, we have the entire genetic map—the human genome—that is revealing a greater understanding of a range of diseases and their treatment. We also have a much greater capacity to know an individual's biological destiny as it is encoded in their DNA, which is essentially a personal genetic blueprint of their current biology as well as a predictor of their biological future. The benefit of knowing this information cannot be overstated. It can save countless lives. Part of the challenge of having this information is to ensure that it not be used unfairly to influence an individual's sociological destiny.

This is the reason I am joining with Senator SNOWE and our other colleagues in support of S. 306, the Genetic Information Nondiscrimination Act of 2005. S. 306 will prohibit discrimination against individuals based on their genetic makeup in both health insurance and employment. This legislation represents a major contribution to civil rights law. It is a victory for consumers, health insurers and health care providers; and it is a victory for employees and employers. It is the result of almost seven years of effort and it is identical to a measure that passed the Senate during the 108th Congress by a vote of 95 to 0.

Together with the much-deserved excitement over the potential of genetic research, there have also been longstanding concerns that genetic information, in the wrong hands, could be misused. Many people have argued that an individual's genetic information which may indicate a predisposition to a particular disease could be used to deny that individual health insurance or employment opportunities. The promise of better health would instead become a potential for greater discrimination and disadvantage. The Genetic Information Nondiscrimination Act of 2005 is designed to address those concerns.

Existing antidiscrimination law has been enacted over the years as a means of correcting longstanding abuses in voter rights, employment, housing and education. However, under current law a person who has suffered employment or health insurance discrimination because of their genetic makeup has very little, if any, recourse to legal remedies. This legislation addresses this problem by creating new enforceable rights for individuals similar to those available under existing civil rights, education and fair employment law.

It is important to note that to date, there has not been a pattern or clear prevalence of genetic discrimination. However, there is anecdotal evidence that people have refused to take genetic tests because of their fear that the predictive information would lead to discrimination. We know the science is rapidly moving forward and we are learning more every day about the ''predictive'' correlation between genetic markers and certain diseases. It is not difficult to imagine such discrimination occurring in the near future. So in a sense, we can take that rare opportunity to be ahead of the curve and enact legislation to preempt discriminatory practices and prevent them from ever happening.

I believe the compromise legislation we consider today will be successful in preventing abuses in the insuring of health services and employment. However, it is extremely important that we remain vigilant against this type of discrimination from ever getting a foothold in our society and if this measure proves insufficient and needs to be strengthened, then we will be back to correct the problems and that effort will have my support.

As I mentioned earlier, the genesis of this legislation links to many years of effort on the part of several of our colleagues. My friend, Senator SNOWE, has for many years been the leader of one effort in which I was proud to join, together with Senators FRIST, ENZI, COLLINS and HAGEL. In another keystone effort, the previous minority leader, Senator Daschle, joined with Senators KENNEDY, DODD and HARKIN to delineate the need for employment protections. All have contributed extensively to a better understanding of the many critical and complex definitions that are the heart of this legislation. We could not have been successful last Congress in weaving an agreement between these bills without the commitment of Senator GREGG, who as chairman of the HELP Committee during the 108th Congress, devoted his energies to finding a middle ground that made today's bipartisan agreements possible. Finally, I commend Senator ENZI, the current chairman of the HELP Committee, not only because he elevated the importance of this bill by moving it to the front of the legislative calendar, but also for the many years of effort he has dedicated to seeing this measure enacted. It is wholly appropriate that he is there as chairman to see it cross the legislative finish line.

Mr. President, I am pleased at the willingness both sides have shown to work through the many difficult aspects of this key issue. Through many meetings and discussions, we have been able to reach agreements on an array of important issues that have improved and strengthened the legislation. I look forward to continuing this cooperative approach as we move to enact this important and landmark initiative and I urge our colleagues in the House to pass it in the near. The President supports this legislation, and it is my hope that we can enact it into law before the end of this Congress. I urge all of my colleagues to vote in its favor.

Mrs. CLINTON. I rise today to express my support for S. 306, the Genetic Nondiscrimination Act. I am proud to be an original cosponsor of this bill, and I thank Senator SNOWE for her leadership on this issue. I urge my colleagues to vote for passage of this important legislation.

The Genetic Nondiscrimination Act is a crucial first step to protecting individuals and families from genetic discrimination. This legislation prevents insurers from denying coverage or raising premiums based upon the results of genetic tests. It prohibits insurance companies and employers from requiring individuals to undergo genetic testing. And finally, this legislation protects workers from employment discrimination based on their genetic information.

Genetic testing holds great promise for medicine. Knowing you are prone to cancer or heart disease or Lou Gehrig's disease may give you a fighting chance. But just try, with that information in hand, to get health insurance in a system without strong protections against discrimination for pre-existing or genetic conditions. As genetic information allows us to predict illness with greater certainty, these tests threaten to turn the most susceptible patients into the most vulnerable.

Each vaunted scientific breakthrough brings with it new challenges to our health system and this legislation will help maximize advancing technology's benefits while protecting Americans from the use of genetic information as a tool for discrimination. With this bill, we can help patients access the latest advances in science without sacrificing their personal privacy.

Genetic discrimination has many victims: those who are denied health coverage, those who lose job opportunities, and those who forego important tests out of fear that they will be victimized. We should encourage people to learn more about their health so that they can make informed decisions about treatment and care, not discourage them from seeking information with threats of unemployment or loss of insurance.

By passing the Genetic Nondiscrimination Act into law, we will address at the Federal level an issue that has been recognized by a majority of states. More than 40 States have enacted genetic nondiscrimination provisions, and I believe that it is far past the time for Congress to follow suit.

I would also like to note that the Genetic Nondiscrimination Act, while a good first step, is only the beginning of our work in this area. Many who have long championed genetic nondiscrimination support stronger protections and tough enforcement provisions.

Passing the Genetic Nondiscrimination Act will help to put a necessary framework in place and we will need the same commitment to action in the future to reinforce this framework, and provide strong, reliable enforcement for the important civil right that we are defending today.

Again, I would urge my colleagues to support the passage of the Genetic Nondiscrimination Act. I also urge the House to take up this matter as quickly as possible, to protect the millions of patients that might benefit from genetic testing.

Mr. CORZINE. Mr. President, I am pleased that today the Senate is considering legislation designed to prohibit discrimination in health insurance and employment based on genetic information.

In the last decade, biomedical researchers have made great strides in genetic research. While these discoveries are critical to researching treatments and, ultimately, discovering cures for many diseases, this information also has the potential to be used to deny health care insurance or employment to an individual who has a genetic predisposition to an illness. That is why we must make it illegal for employers and health insurers to discriminate against individuals on the basis of their genetic information.

S. 306 is an important step, but it is only a first step. Any legislation addressing this issue must include strong enforcement and deterrence mechanisms. As this legislation moves forward, I hope its enforcement provisions will be strengthened. Without strong accountability provisions, there is little to deter employers and health insurers from using genetic information inappropriately.

In addition, I hope that when this legislation is conferenced, the conferees will find ways to strengthen the privacy provisions. It is essential that our laws keep pace with technological advances and that we continue to protect the privacy of our citizens. Advances in technology cannot place fundamental American rights at risk.

Despite my concerns about the enforcement and privacy provisions, I believe this legislation is a critical first step and look forward to working with my colleagues to continue addressing the important issue of genetic discrimination.

Mr. DODD. Mr. President, I rise today to speak in support of S. 306, the Genetic Information Nondiscrimination Act. Before I talk about why this bill is so crucial, I want to thank the chairman and ranking member of the HELP Committee, Senator ENZI and Senator KENNEDY, for their efforts on this bill, and for making it one of their first priorities in the 109th Congress. Their action sends a strong signal about the importance of this legislation.

I would be remiss if I did not also mention the dedication to this issue shown by our former Democratic leader, Senator Tom Daschle. We are in a position to pass this bill today as a direct result of the work done by Senator Daschle.

Many of us, on both sides of the aisle, saw the need several years ago for legally enforceable rules to maximize the potential benefits of genetic information—and minimize its potential dangers. I have worked on this issue with many of my colleagues since the 105th Congress. I have chaired a hearing in the HELP Committee, and I have introduced legislation with several of my colleagues, notably Senator Daschle, Senator KENNEDY, and Senator HARKIN, going back to the 106th Congress.

The legislation that we will consider today is a bipartisan compromise between our bill, and a similar bill introduced by Senator SNOWE and others. It represents a culmination of the efforts of many of us to establish such rules. It is an enormous step forward, and I would like to acknowledge the hard work of everyone who was involved in crafting this legislation.

Over the past decade, the science of genetics has developed at an astonishing pace. The mapping of the human genome is undoubtedly one of the greatest scientific achievements of this generation. We have not even completely grasped the wide array of potential benefits that may come from our newfound genetic knowledge.

Certainly, the impact on our health will be profound. Doctors will be able to read our unique genetic blueprints and predict the likelihood of developing diseases such as cancer, Alzheimer's, or Parkinson's. They will also be able to use an individual's genetic information to develop treatments for these same diseases, and target individuals with the treatment that will work best for them. This is not science fiction. It is already beginning to happen.

For all the promise of the genetic age, there is also an inherent threat. Science has outpaced the law and Americans are worried, and rightly so, that their genetic information will be used—not to improve their health—but to deny them health insurance or employment. There is no information more personal and private than genetic information—and no information more worthy of special protection. Our genetic code is the very blueprint of our selves. It is with us from birth, and to some extent it determines who we will become. What an incredibly powerful tool, with its vast potential to help us live healthier lives. But the nature of genetic information also makes it dangerous to the individual if used incorrectly.

This bill provides significant new protections against the misuse of genetic information. It ensures that Americans who are genetically predisposed to health conditions will not lose or be denied health insurance, jobs, or promotions based on their genetic makeup. Reaching an agreement on this legislation means that our laws dealing with genetic information can begin to catch up to the reality of our technological capability in the field.

With these protections in place, individuals need not feel reluctant to get the tests that may save or improve their lives. Although the Americans with Disabilities Act, ADA, and the Health Insurance Portability and Accountability Act, HIPAA, took important steps towards preventing genetic discrimination, this legislation is more specifically tailored to prohibiting its misuse. Health plans and health insurance issuers will not be allowed to underwrite, determine premiums, or decide on eligibility for enrollment based on genetic information. Employers will not be allowed to alter hiring practices based on genetic information. The American public can feel secure in the knowledge that their genetic blueprint will not be used to harm them, that a genetic marker indicating a possible illness later in life will not cause them to lose a job or health insurance.

Like any compromise, this bill is not perfect. In particular, while it poses some important limitations on the collection of personal genetic information by insurance companies, it would allow them to collect this information, without consent, once an individual is enrolled in a health plan. While insurers are expressly prohibited from using this information for the purposes of underwriting, I am concerned that once they have this information, it may be difficult to control how it is used and who has access to it. We all know from experience that the difficulty of protecting information increases exponentially with each additional person who has access to that information. As this bill becomes law—and I sincerely hope it will—I will monitor closely how it is implemented, and the extent to which privacy is protected. We may need to revisit this issue in the future.

Mr. President, despite this shortcoming, I support this bill, as it represents a vast improvement over current law in many ways. I hope that it will become law in the very near future. This Chamber passed a similar bill last year by a vote of 95 to 0. Unfortunately, the House did not take up this important legislation. I urge them to do so as soon as possible. We all should feel free to make our health care decisions based on our health care needs, not based on fear. Today, we are close to making that goal a reality.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, I ask unanimous consent for an additional 2 minutes to finish this up.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ENZI. Mr. President, I thank the Senator from Iowa and all others who have spoken today. It has been a very positive day. I thank the Presiding Officer for the care with which he reviewed this bill and the issues he brought up and the resolution that I am sure we have gotten.

I would be very remiss if I did not thank the staffs of all of those people who help us dig into these issues to be sure we are doing the right thing. They bring some different perspectives that add to coming up with the right solution.

I particularly thank those people from the committee on both sides of the aisle for their efforts. I thank Kim Monk, David Thompson, Bill Pewen, David Bowen, Holly Fechner, Sean Donohue, Ilyse Schuman, Andrew Patzman, David Nexon, Adam Gluck, Carolyn Holmes, Kate Leone, Ben Berwick, Jennifer Duck, and Steve Northrup.

I particularly mention Katherine McGuire, who is the new staff director, who was able to put together all of the personnel we needed and then a committee retreat, as well as coordinating and moving all these things along, so we could be at this point this soon.

We thank all those people for their individual efforts as well as the team efforts they put in.

At this point, I think we are ready to move on. I yield the floor and thank everybody for their participation.

AMENDMENT NO. 13

(Purpose: To provide a complete substitute)

The PRESIDING OFFICER. Under the previous order, amendment No. 13 is agreed to.

The amendment (No. 13) was agreed to.

(The amendment is printed in today's RECORD under "Text of Amendments.")

The PRESIDING OFFICER. The substitute, as amended, is agreed to.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The clerk will read the bill for the third time.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. ENZI. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that there now be a period of morning business with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

NOTICE OF PROPOSED RULEMAKING

Mr. STEVENS. Mr. President, I ask unanimous consent that the attached statement from the Office of Compliance be printed in the RECORD today pursuant to section 304(b)(1) of the Congressional Accountability Act of 1995 (2 U.S.C. 1384(b)(1)).

There being no objection, the material was ordered to be printed in the RECORD, as follows:

FROM THE BOARD OF DIRECTORS OF THE OFFICE OF COMPLIANCE

Notice of Proposed Rulemaking, and Request for Comments From Interested Parties

NEW PROPOSED REGULATIONS IMPLEMENTING CERTAIN SUBSTANTIVE EMPLOYMENT RIGHTS AND PROTECTIONS FOR VETERANS, AS REQUIRED BY 2 U.S.C. 1316a, THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995, AS AMENDED (CAA).

Background

The purpose of this Notice is to issue proposed substantive regulations which will implement the 1998 amendment to the CAA which applies certain veterans' employment rights and protections to employing offices and employees covered by the CAA.

What is the authority under the CAA for these proposed substantive regulations? In 1998, the CAA was amended through addition of 2 U.S.C. 1316a, a provision of the Veterans' Employment Opportunities Act of 1998 (VEOA), which states in relevant part: "The rights and protections established under section 2108, sections 3309 through 3312, and subchapter I of chapter 35 of Title 5, shall apply to covered employees." As will be described in greater detail below, these sections of Title 5 accord certain hiring and retention rights to veterans of the uniformed services. Section 1316a(4)(B) states that "The regulations issued . . . shall be the same as the most relevant substantive regulations (applicable with respect to the Executive Branch)