

110TH CONGRESS  
1ST SESSION

# H. R. 493

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## AN ACT

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

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

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

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

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

Sec. 1. Short title; table of contents.

Sec. 2. Findings.

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

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

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

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

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

Sec. 105. Privacy and confidentiality.

Sec. 106. Assuring coordination.

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

Sec. 201. Definitions.

Sec. 202. Employer practices.

Sec. 203. Employment agency practices.

Sec. 204. Labor organization practices.

Sec. 205. Training programs.

Sec. 206. Confidentiality of genetic information.

Sec. 207. Remedies and enforcement.

Sec. 208. Disparate impact.

Sec. 209. Construction.

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

Sec. 211. Regulations.

Sec. 212. Authorization of appropriations.

Sec. 213. Effective date.

**TITLE III—MISCELLANEOUS PROVISIONS**

Sec. 301. Guarantee agency collection retention.

Sec. 302. Severability.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Retirement Income Security Act of 1974 (29 U.S.C. 1182)  
2 is amended by adding at the end the following:

3 “(c) GENETIC TESTING.—

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8           “(6) GENETIC INFORMATION.—

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

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

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

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

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

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

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

13          “(7) GENETIC TEST.—

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

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

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

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

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

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

8            “(A) a genetic test;

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

12            “(C) genetic education.

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

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

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

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

24            and

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

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

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

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

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

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

24           “(B) AMOUNT.—

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

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

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

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

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

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

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



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

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

15                  “(D) LIMITATIONS.—

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

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

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

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

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

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

1 “(II) \$500,000.

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

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

13 (f) REGULATIONS AND EFFECTIVE DATE.—

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

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

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

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

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

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

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

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

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

26 “(c) GENETIC TESTING.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

5           “(16) GENETIC INFORMATION.—

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

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

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

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

15           “(B) INCLUSION OF GENETIC SERVICES.—

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

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

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

10           “(17) GENETIC TEST.—

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

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

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

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

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

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

5                    “(A) a genetic test;

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

9                    “(C) genetic education.

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

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

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

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

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

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

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

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

19          “(B) AMOUNT.—

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

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

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

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

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

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

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

19                   “(II) which occurred or continued  
20 during the period involved;

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

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

9           “(D) LIMITATIONS.—

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

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

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

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

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

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

22                   “(II) \$500,000.

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



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

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

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

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

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

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

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

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

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

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

10 “(d) GENETIC TESTING.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (d) REGULATIONS AND EFFECTIVE DATE.—

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

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

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

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

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

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

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

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

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



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

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

9 “(c) GENETIC TESTING.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 “(7) GENETIC INFORMATION.—

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

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

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

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

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

1 “(8) GENETIC TEST.—

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

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

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

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

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

21 “(A) a genetic test;

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

25 “(C) genetic education.

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

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

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

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

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

16           (e) ENFORCEMENT.—

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

21           **“SEC. 9834. ENFORCEMENT.**

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



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

“Sec. 9834. Enforcement.”.

5           (f) REGULATIONS AND EFFECTIVE DATE.—

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

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

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

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

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

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

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

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

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

12 “(1) GENETIC TESTING.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 “(B) GENETIC INFORMATION.—

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

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

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

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

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

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

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

9 “(C) GENETIC TEST.—

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

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

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

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

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

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

6 “(i) a genetic test;

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

10 “(iii) genetic education.

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

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

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

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

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



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

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

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

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

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

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

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

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

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

13          (d) TRANSITION PROVISIONS.—

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

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

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

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

20 (4) DATE SPECIFIED.—

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

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

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

3 (ii) October 1, 2008.

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

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

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

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

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

5 “APPLICATION OF HIPAA REGULATIONS TO GENETIC  
6 INFORMATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (b) REGULATIONS; EFFECTIVE DATE.—

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

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

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

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

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



1       sponsibility under this title (and the amendments  
2       made by this title) are administered so as to have  
3       the same effect at all times; and

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

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

13       **SEC. 201. DEFINITIONS.**

14       In this title:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1           gree relative of such individual or of an indi-  
2           vidual described in subparagraph (A).

3           (4) GENETIC INFORMATION.—

4                 (A) IN GENERAL.—The term “genetic in-  
5           formation” means, with respect to any indi-  
6           vidual, information about—

7                         (i) such individual’s genetic tests,

8                         (ii) the genetic tests of family mem-  
9           bers of such individual, and

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

13                 (B) INCLUSION OF GENETIC SERVICES.—

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

20                 (C) EXCLUSIONS.—The term “genetic in-  
21           formation” shall not include information about  
22           the sex or age of any individual.

23           (5) GENETIC MONITORING.—The term “genetic  
24           monitoring” means the periodic examination of em-  
25           ployees to evaluate acquired modifications to their

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

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

10 (A) a genetic test;

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

14 (C) genetic education.

15 (7) GENETIC TEST.—

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

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

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

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

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

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

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

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

25 (2) where—

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

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

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

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

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

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

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

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

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

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

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

17                   (D) the monitoring is in compliance with—

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



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

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

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

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

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

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

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

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

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

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

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

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

9 (2) where—

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

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

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

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

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

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

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

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

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

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

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

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

5           (D) the monitoring is in compliance with—

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

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

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

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

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

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

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

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

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

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

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

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

12          (2) where—

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

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

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

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

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

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

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

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



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

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

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

7 (D) the monitoring is in compliance with—

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

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

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

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

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

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

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

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

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

1       deprive or tend to deprive any individual of employ-  
2       ment opportunities, or otherwise adversely affect the  
3       status of the individual as an employee, because of  
4       genetic information with respect to the individual; or

5               (3) to cause or attempt to cause an employer to  
6       discriminate against an applicant for or a partici-  
7       pant in such apprenticeship or other training or re-  
8       training in violation of this title.

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

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

19             (2) where—

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

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

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

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

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

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

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

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

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

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

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

20           (D) the monitoring is in compliance with—

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

1           651 et seq.), the Federal Mine Safety and  
2           Health Act of 1977 (30 U.S.C. 801 et  
3           seq.), or the Atomic Energy Act of 1954  
4           (42 U.S.C. 2011 et seq.); or

5           (ii) State genetic monitoring regula-  
6           tions, in the case of a State that is imple-  
7           menting genetic monitoring regulations  
8           under the authority of the Occupational  
9           Safety and Health Act of 1970 (29 U.S.C.  
10          651 et seq.); and

11          (E) the employer, labor organization, or  
12          joint labor-management committee, excluding  
13          any licensed health care professional or board  
14          certified genetic counselor that is involved in  
15          the genetic monitoring program, receives the re-  
16          sults of the monitoring only in aggregate terms  
17          that do not disclose the identity of specific indi-  
18          viduals; or

19          (6) where the employer conducts DNA analysis  
20          for law enforcement purposes as a forensic labora-  
21          tory, includes such analysis in the Combined DNA  
22          Index System pursuant to section 210304 of the  
23          Violent Crime Control and Law Enforcement Act of  
24          1994 (42 U.S.C. 14132), and requests or requires  
25          genetic information of such employer's apprentices

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

9 (c) MEMBERSHIP.—

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

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

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

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

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

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

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

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

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

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

20          (d) ADMINISTRATIVE PROVISIONS.—

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

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

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

4 (3) INFORMATION FROM FEDERAL AGENCIES.—

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

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

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

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

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

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

7 **SEC. 209. CONSTRUCTION.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **SEC. 211. REGULATIONS.**

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

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

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

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

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

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

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

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

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

24 **SEC. 302. SEVERABILITY.**

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

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

Passed the House of Representatives April 25, 2007.

Attest:

*Clerk.*





110<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

**H. R. 493**

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**AN ACT**

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