

110TH CONGRESS
1ST SESSION

H. R. 493

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

IN THE HOUSE OF REPRESENTATIVES

JANUARY 16, 2007

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

MAN, Mr. WELLER of Illinois, Mr. WEXLER, Mr. WHITFIELD, Mr. WICKER, Mr. WILSON of South Carolina, Mr. WOLF, Ms. WOOLSEY, Mr. YARMUTH, Mr. YOUNG of Florida, Mr. CROWLEY, Mr. HOLT, Mr. JINDAL, Mr. LATOURETTE, and Mr. TANCREDO) introduced the following bill; which was referred to the Committee on Education and Labor, and in addition to the Committees on Energy and Commerce and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

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

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

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

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

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

Sec. 1. Short title; table of contents.

Sec. 2. Findings.

TITLE I—GENETIC NONDISCRIMINATION IN HEALTH INSURANCE

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

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

Sec. 103. Amendments to title XVIII of the Social Security Act relating to medigap.

Sec. 104. Privacy and confidentiality.

Sec. 105. Assuring coordination.

Sec. 106. Regulations; effective date.

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

Sec. 201. Definitions.

Sec. 202. Employer practices.

Sec. 203. Employment agency practices.

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

TITLE III—MISCELLANEOUS PROVISION

Sec. 301. Severability.

1 **SEC. 2. FINDINGS.**

2 Congress makes the following findings:

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

17 (2) The early science of genetics became the
18 basis of State laws that provided for the sterilization
19 of persons having presumed genetic “defects” such

1 as mental retardation, mental disease, epilepsy,
2 blindness, and hearing loss, among other conditions.
3 The first sterilization law was enacted in the State
4 of Indiana in 1907. By 1981, a majority of States
5 adopted sterilization laws to “correct” apparent ge-
6 netic traits or tendencies. Many of these State laws
7 have since been repealed, and many have been modi-
8 fied to include essential constitutional requirements
9 of due process and equal protection. However, the
10 current explosion in the science of genetics, and the
11 history of sterilization laws by the States based on
12 early genetic science, compels Congressional action
13 in this area.

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

1 early 1970s began mandating genetic screening of
2 all African Americans for sickle cell anemia, leading
3 to discrimination and unnecessary fear. To alleviate
4 some of this stigma, Congress in 1972 passed the
5 National Sickle Cell Anemia Control Act, which
6 withholds Federal funding from States unless sickle
7 cell testing is voluntary.

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

18 (5) Federal law addressing genetic discrimina-
19 tion in health insurance and employment is incom-
20 plete in both the scope and depth of its protections.
21 Moreover, while many States have enacted some type
22 of genetic non-discrimination law, these laws vary
23 widely with respect to their approach, application,
24 and level of protection. Congress has collected sub-
25 stantial evidence that the American public and the

1 medical community find the existing patchwork of
2 State and Federal laws to be confusing and inad-
3 equate to protect them from discrimination. There-
4 fore Federal legislation establishing a national and
5 uniform basic standard is necessary to fully protect
6 the public from discrimination and allay their con-
7 cerns about the potential for discrimination, thereby
8 allowing individuals to take advantage of genetic
9 testing, technologies, research, and new therapies.

10 **TITLE I—GENETIC NON-**
11 **DISCRIMINATION IN HEALTH**
12 **INSURANCE**

13 **SEC. 101. AMENDMENTS TO EMPLOYEE RETIREMENT IN-**
14 **COME SECURITY ACT OF 1974.**

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

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

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

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

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

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

20 (b) LIMITATIONS ON GENETIC TESTING.—Section
21 702 of the Employee Retirement Income Security Act of
22 1974 (29 U.S.C. 1182) is amended by adding at the end
23 the following:

24 “(c) GENETIC TESTING.—

1 “(1) LIMITATION ON REQUESTING OR REQUIR-
2 ING GENETIC TESTING.—A group health plan, or 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.—Nothing in
8 this part shall be construed to—

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

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

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

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

5 (c) REMEDIES AND ENFORCEMENT.—Section 502 of
6 the Employee Retirement Income Security Act of 1974
7 (29 U.S.C. 1132) is amended by adding at the end the
8 following:

9 “(n) ENFORCEMENT OF GENETIC NONDISCRIMINA-
10 TION REQUIREMENTS.—

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

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

3 “(A) REINSTATEMENT OF BENEFITS
4 WHERE EQUITABLE RELIEF HAS BEEN AWARD-
5 ED.—The recovery of benefits by a participant
6 or beneficiary under a civil action under this
7 section may include an administrative penalty
8 under subparagraph (B) and the retroactive re-
9 instatement of coverage under the plan involved
10 to the date on which the participant or bene-
11 ficiary was denied eligibility for coverage if—

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

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

18 “(B) ADMINISTRATIVE PENALTY.—

19 “(i) IN GENERAL.—An administrator
20 who fails to comply with the requirements
21 of subsection (a)(1)(F), (b)(3), or (c) of
22 section 702 with respect to a participant or
23 beneficiary may, in an action commenced
24 under subsection (a)(1)(B), be personally
25 liable in the discretion of the court, for a

1 penalty in the amount not more than \$100
2 for each day in the noncompliance period.

3 “(ii) NONCOMPLIANCE PERIOD.—For
4 purposes of clause (i), the term ‘non-
5 compliance period’ means the period—

6 “(I) beginning on the date that a
7 failure described in clause (i) occurs;
8 and

9 “(II) ending on the date that
10 such failure is corrected.

11 “(iii) PAYMENT TO PARTICIPANT OR
12 BENEFICIARY.—A penalty collected under
13 this subparagraph shall be paid to the par-
14 ticipant or beneficiary involved.

15 “(3) SECRETARIAL ENFORCEMENT AUTHOR-
16 ITY.—

17 “(A) GENERAL RULE.—The Secretary has
18 the authority to impose a penalty on any failure
19 of a group health plan to meet the requirements
20 of subsection (a)(1)(F), (b)(3), or (c) of section
21 702.

22 “(B) AMOUNT.—

23 “(i) IN GENERAL.—The amount of
24 the penalty imposed by subparagraph (A)
25 shall be \$100 for each day in the non-

1 compliance period with respect to each in-
2 dividual to whom such failure relates.

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

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

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

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

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

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

21 “(II) which occurred or continued
22 during the period involved;

23 the amount of penalty imposed by subpara-
24 graph (A) by reason of such failures with

1 respect to such individual shall not be less
2 than \$2,500.

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

11 “(D) LIMITATIONS.—

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

22 “(ii) PENALTY NOT TO APPLY TO
23 FAILURES CORRECTED WITHIN CERTAIN
24 PERIODS.—No penalty shall be imposed by
25 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 (d) DEFINITIONS.—Section 733(d) of the Employee
6 Retirement Income Security Act of 1974 (29 U.S.C.
7 1191b(d)) is amended by adding at the end the following:

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

10 “(A) the spouse of the individual;

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

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

17 “(6) GENETIC INFORMATION.—

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

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

22 “(ii) the genetic tests of family mem-
23 bers of the individual; or

1 “(iii) the occurrence of a disease or
2 disorder in family members of the indi-
3 vidual.

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

7 “(7) GENETIC TEST.—

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

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

15 “(i) an analysis of proteins or metabo-
16 lites that does not detect genotypes,
17 mutations, or chromosomal changes; or

18 “(ii) an analysis of proteins or me-
19 tabolites that is directly related to a mani-
20 fested disease, disorder, or pathological
21 condition that could reasonably be detected
22 by a health care professional with appro-
23 priate training and expertise in the field of
24 medicine involved.

1 “(8) GENETIC SERVICES.—The term ‘genetic
2 services’ means—

3 “(A) a genetic test;

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

6 or

7 “(C) genetic education.”.

8 (e) REGULATIONS AND EFFECTIVE DATE.—

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

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

19 **SEC. 102. AMENDMENTS TO THE PUBLIC HEALTH SERVICE**
20 **ACT.**

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

23 (1) PROHIBITION OF HEALTH DISCRIMINATION
24 ON THE BASIS OF GENETIC INFORMATION OR GE-
25 NETIC SERVICES.—

1 (A) NO ENROLLMENT RESTRICTION FOR
2 GENETIC SERVICES.—Section 2702(a)(1)(F) of
3 the Public Health Service Act (42 U.S.C.
4 300gg–1(a)(1)(F)) is amended by inserting be-
5 fore the period the following: “(including infor-
6 mation about a request for or receipt of genetic
7 services by an individual or family member of
8 such individual)”.

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

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

16 (ii) by adding at the end the fol-
17 lowing:

18 “(3) NO DISCRIMINATION IN GROUP PREMIUMS
19 BASED ON GENETIC INFORMATION.—For purposes
20 of this section, a group health plan, or a health in-
21 surance issuer offering group health insurance cov-
22 erage in connection with a group health plan, shall
23 not adjust premium or contribution amounts for a
24 group on the basis of genetic information concerning
25 an individual in the group or a family member of the

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

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

8 “(c) GENETIC TESTING.—

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

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

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

22 “(B) limit the authority of a health care
23 professional who is employed by or affiliated
24 with a group health plan or a health insurance
25 issuer and who is providing health care services

1 to an individual as part of a bona fide wellness
2 program to notify such individual of the avail-
3 ability of a genetic test or to provide informa-
4 tion to such individual regarding such genetic
5 test; or

6 “(C) authorize or permit a health care pro-
7 fessional to require that an individual undergo
8 a genetic test.

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

13 (3) REMEDIES AND ENFORCEMENT.—Section
14 2722(b) of the Public Health Service Act (42 U.S.C.
15 300gg–22(b)) is amended by adding at the end the
16 following:

17 “(3) ENFORCEMENT AUTHORITY RELATING TO
18 GENETIC DISCRIMINATION.—

19 “(A) GENERAL RULE.—In the cases de-
20 scribed in paragraph (1), notwithstanding the
21 provisions of paragraph (2)(C), the following
22 provisions shall apply with respect to an action
23 under this subsection by the Secretary with re-
24 spect to any failure of a health insurance issuer
25 in connection with a group health plan, to meet

1 the requirements of subsection (a)(1)(F),
2 (b)(3), or (c) of section 2702.

3 “(B) AMOUNT.—

4 “(i) IN GENERAL.—The amount of
5 the penalty imposed under this paragraph
6 shall be \$100 for each day in the non-
7 compliance period with respect to each in-
8 dividual to whom such failure relates.

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

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

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

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

20 “(i) IN GENERAL.—In the case of 1 or
21 more failures with respect to an indi-
22 vidual—

23 “(I) which are not corrected be-
24 fore the date on which the plan re-

1 ceives a notice from the Secretary of
2 such violation; and

3 “(II) which occurred or continued
4 during the period involved;

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

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

17 “(D) LIMITATIONS.—

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

1 cising reasonable diligence would not have
2 known, that such failure existed.

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

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

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11 during the 30-day period beginning on
12 the first date the person otherwise lia-
13 ble for such penalty knew, or exer-
14 cising reasonable diligence would have
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16 “(iii) OVERALL LIMITATION FOR UN-
17 INTENTIONAL FAILURES.—In the case of
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19 and not to willful neglect, the penalty im-
20 posed by subparagraph (A) for failures
21 shall not exceed the amount equal to the
22 lesser of—

23 “(I) 10 percent of the aggregate
24 amount paid or incurred by the em-
25 ployer (or predecessor employer) dur-

1 ing the preceding taxable year for
2 group health plans; or

3 “(II) \$500,000.

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

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

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

16 “(A) the spouse of the individual;

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

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

23 “(16) GENETIC INFORMATION.—

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

4 “(i) an individual’s genetic tests;

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

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

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

13 “(17) 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 “(18) GENETIC SERVICES.—The term ‘genetic
 7 services’ means—

8 “(A) a genetic test;

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

11 or

12 “(C) genetic education.”

13 (b) AMENDMENT RELATING TO THE INDIVIDUAL
 14 MARKET.—

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

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

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

22 **“SEC. 2753. PROHIBITION OF HEALTH DISCRIMINATION ON**
 23 **THE BASIS OF GENETIC INFORMATION.**

24 “(a) PROHIBITION ON GENETIC INFORMATION AS A
 25 CONDITION OF ELIGIBILITY.—A health insurance issuer

1 offering health insurance coverage in the individual mar-
2 ket may not establish rules for the eligibility (including
3 continued eligibility) of any individual to enroll in indi-
4 vidual health insurance coverage based on genetic infor-
5 mation (including information about a request for or re-
6 ceipt of genetic services by an individual or family member
7 of such individual).

8 “(b) PROHIBITION ON GENETIC INFORMATION IN
9 SETTING PREMIUM RATES.—A health insurance issuer of-
10 fering health insurance coverage in the individual market
11 shall not adjust premium or contribution amounts for an
12 individual on the basis of genetic information concerning
13 the individual or a family member of the individual (in-
14 cluding information about a request for or receipt of ge-
15 netic services by an individual or family member of such
16 individual).

17 “(c) GENETIC TESTING.—

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

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

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

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

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

17 (2) REMEDIES AND ENFORCEMENT.—Section
18 2761(b) of the Public Health Service Act (42 U.S.C.
19 300gg–61(b)) is amended to read as follows:

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

1 tions of genetic nondiscrimination provisions, in relation
2 to the enforcement of the provisions of part A with respect
3 to issuers of health insurance coverage in the small group
4 market in the State.”.

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

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

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

14 “(D) ELECTION NOT APPLICABLE TO RE-
15 QUIREMENTS CONCERNING GENETIC INFORMA-
16 TION.—The election described in subparagraph
17 (A) shall not be available with respect to the
18 provisions of subsections (a)(1)(F) and (c) of
19 section 2702 and the provisions of section
20 2702(b) to the extent that such provisions
21 apply to genetic information (or information
22 about a request for or the receipt of genetic
23 services by an individual or a family member of
24 such individual).”.

25 (d) REGULATIONS AND EFFECTIVE DATE.—

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

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

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

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

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

21 (a) NONDISCRIMINATION.—

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

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

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

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

19 (b) LIMITATIONS ON GENETIC TESTING.—

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

23 “(x) LIMITATIONS ON GENETIC TESTING.—

24 “(1) GENETIC TESTING.—

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

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

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

14 “(ii) limit the authority of a health
15 care professional who is employed by or af-
16 filiated with an issuer of a medicare sup-
17 plemental policy and who is providing
18 health care services to an individual as
19 part of a bona fide wellness program to no-
20 tify such individual of the availability of a
21 genetic test or to provide information to
22 such individual regarding such genetic test;
23 or

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

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

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

7 “(i) the spouse of the individual;

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

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

14 “(B) GENETIC INFORMATION.—

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

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

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

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

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

4 “(C) GENETIC TEST.—

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

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

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

16 “(II) an analysis of proteins or
17 metabolites that is directly related to
18 a manifested disease, disorder, or
19 pathological condition that could rea-
20 sonably be detected by a health care
21 professional with appropriate training
22 and expertise in the field of medicine
23 involved.

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

1 “(i) a genetic test;

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

5 “(iii) genetic education.

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

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

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

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

23 (c) TRANSITION PROVISIONS.—

24 (1) IN GENERAL.—If the Secretary of Health
25 and Human Services identifies a State as requiring

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

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

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

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

5 (4) DATE SPECIFIED.—

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

9 (i) the date the State changes its stat-
10 utes or regulations to conform its regu-
11 latory program to the changes made by
12 this section, or

13 (ii) October 1, 2008.

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

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

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

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

9 **SEC. 104. PRIVACY AND CONFIDENTIALITY.**

10 (a) **APPLICABILITY.**—Except as provided in sub-
11 section (d), the provisions of this section shall apply to
12 group health plans, health insurance issuers (including
13 issuers in connection with group health plans or individual
14 health coverage), and issuers of medicare supplemental
15 policies, without regard to—

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

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

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

22 (b) **COMPLIANCE WITH CERTAIN CONFIDENTIALITY**
23 **STANDARDS WITH RESPECT TO GENETIC INFORMA-**
24 **TION.**—

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

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

19 (c) PROHIBITION ON COLLECTION OF GENETIC IN-
20 FORMATION.—

21 (1) IN GENERAL.—A group health plan, health
22 insurance issuer, or issuer of a medicare supple-
23 mental policy shall not request, require, or purchase
24 genetic information (including information about a
25 request for or a receipt of genetic services by an in-

1 dividual or family member of such individual) for
2 purposes of underwriting, determinations of eligi-
3 bility to enroll, premium rating, or the creation, re-
4 newal or replacement of a plan, contract or coverage
5 for health insurance or health benefits.

6 (2) LIMITATION RELATING TO THE COLLEC-
7 TION OF GENETIC INFORMATION PRIOR TO ENROLL-
8 MENT.—A group health plan, health insurance
9 issuer, or issuer of a medicare supplemental policy
10 shall not request, require, or purchase genetic infor-
11 mation (including information about a request for or
12 a receipt of genetic services by an individual or fam-
13 ily member of such individual) concerning a partici-
14 pant, beneficiary, or enrollee prior to the enrollment,
15 and in connection with such enrollment, of such indi-
16 vidual under the plan, coverage, or policy.

17 (3) INCIDENTAL COLLECTION.—Where a group
18 health plan, health insurance issuer, or issuer of a
19 medicare supplemental policy obtains genetic infor-
20 mation incidental to the requesting, requiring, or
21 purchasing of other information concerning a partici-
22 pant, beneficiary, or enrollee, such request, require-
23 ment, or purchase shall not be considered a violation
24 of this subsection if—

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

3 (B) any genetic information (including in-
4 formation about a request for or receipt of ge-
5 netic services) requested, required, or purchased
6 is not used or disclosed in violation of sub-
7 section (b).

8 (d) APPLICATION OF CONFIDENTIALITY STAND-
9 ARDS.—The provisions of subsections (b) and (c) shall not
10 apply—

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

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

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

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

11 (f) PREEMPTION.—

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

23 (2) RULE OF CONSTRUCTION.—Nothing in
24 paragraph (1) shall be construed to establish a pen-
25 alty, remedy, or cause of action under State law if

1 such penalty, remedy, or cause of action is not oth-
2 erwise available under such State law.

3 (g) COORDINATION WITH PRIVACY REGULATIONS.—

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

12 (h) DEFINITIONS.—In this section:

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

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

24 (3) ISSUER OF A MEDICARE SUPPLEMENTAL
25 POLICY.—The term “issuer of a medicare supple-

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

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

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

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

11 (1) regulations, rulings, and interpretations
12 issued by such Secretaries relating to the same mat-
13 ter over which two or more such Secretaries have re-
14 sponsibility under this title (and the amendments
15 made by this title) are administered so as to have
16 the same effect at all times; and

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

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

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

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

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

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

15 **SEC. 201. DEFINITIONS.**

16 In this title:

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

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

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

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

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

3 (ii) a State employee (including an 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) the spouse of the individual;

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

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

1 (4) GENETIC INFORMATION.—

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

5 (i) an individual’s genetic tests;

6 (ii) the genetic tests of family mem-
7 bers of the individual; or

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

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

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

23 (6) GENETIC SERVICES.—The term “genetic
24 services” means—

25 (A) a genetic test;

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

4 (C) genetic education.

5 (7) GENETIC TEST.—

6 (A) IN GENERAL.—The term “genetic
7 test” means the analysis of human DNA, RNA,
8 chromosomes, proteins, or metabolites, that de-
9 tects genotypes, mutations, or chromosomal
10 changes.

11 (B) EXCEPTION.—The term “genetic test”
12 does not mean an analysis of proteins or me-
13 tabolites that does not detect genotypes,
14 mutations, or chromosomal changes.

15 **SEC. 202. EMPLOYER PRACTICES.**

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

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

1 (2) to limit, segregate, or classify the employees
2 of the employer in any way that would deprive or
3 tend to deprive any employee of employment oppor-
4 tunities or otherwise adversely affect the status of
5 the employee as an employee, because of genetic in-
6 formation with respect to the employee (or informa-
7 tion about a request for or the receipt of genetic
8 services by such employee or family member of such
9 employee).

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

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

20 (2) where—

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

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

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

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

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

21 (4) where an employer purchases documents
22 that are commercially and publicly available (includ-
23 ing newspapers, magazines, periodicals, and books,
24 but not including medical databases or court
25 records) that include family medical history; or

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

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

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

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

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

12 (D) the monitoring is in compliance with—

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

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

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

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

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

15 **SEC. 203. EMPLOYMENT AGENCY PRACTICES.**

16 (a) USE OF GENETIC INFORMATION.—It shall be an
17 unlawful employment practice for an employment agen-
18 cy—

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

1 (2) to limit, segregate, or classify individuals or
2 fail or refuse to refer for employment any individual
3 in any way that would deprive or tend to deprive any
4 individual of employment opportunities, or otherwise
5 adversely affect the status of the individual as an
6 employee, because of genetic information with re-
7 spect to the individual (or information about a re-
8 quest for or the receipt of genetic services by such
9 individual or family member of such individual); or
10 (3) to cause or attempt to cause an employer to
11 discriminate against an individual in violation of this
12 title.

13 (b) ACQUISITION OF GENETIC INFORMATION.—It
14 shall be an unlawful employment practice for an employ-
15 ment agency to request, require, or purchase genetic infor-
16 mation with respect to an individual or a family member
17 of the individual (or information about a request for the
18 receipt of genetic services by such individual or a family
19 member of such individual) except—

20 (1) where an employment agency inadvertently
21 requests or requires family medical history of the in-
22 dividual or family member of the individual;

23 (2) where—

24 (A) health or genetic services are offered
25 by the employment agency, including such serv-

1 ices offered as part of a bona fide wellness pro-
2 gram;

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

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

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

20 (3) where an employment agency 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 an employment agency purchases
2 documents that are commercially and publicly avail-
3 able (including newspapers, magazines, periodicals,
4 and books, but not including medical databases or
5 court records) that include family medical history; or

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

9 (A) the employment agency provides writ-
10 ten notice of the genetic monitoring to the indi-
11 vidual;

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

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

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

18 (D) the monitoring is in compliance with—

19 (i) any Federal genetic monitoring
20 regulations, including any such regulations
21 that may be promulgated by the Secretary
22 of Labor pursuant to the Occupational
23 Safety and Health Act of 1970 (29 U.S.C.
24 651 et seq.), the Federal Mine Safety and
25 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 employment agency, excluding any
10 licensed health care professional or board cer-
11 tified genetic counselor that is involved in the
12 genetic monitoring program, receives the results
13 of the monitoring only in aggregate terms that
14 do not disclose the identity of specific individ-
15 uals;

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

22 **SEC. 204. LABOR ORGANIZATION PRACTICES.**

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

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

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

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

20 (b) ACQUISITION OF GENETIC INFORMATION.—It
21 shall be an unlawful employment practice for a labor orga-
22 nization to request, require, or purchase genetic informa-
23 tion with respect to a member or a family member of the
24 member (or information about a request for the receipt

1 of genetic services by such member or a family member
2 of such member) except—

3 (1) where a labor organization inadvertently re-
4 quests or requires family medical history of the
5 member or family member of the member;

6 (2) where—

7 (A) health or genetic services are offered
8 by the labor organization, including such serv-
9 ices offered as part of a bona fide wellness pro-
10 gram;

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

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

20 (D) any individually identifiable genetic in-
21 formation provided under subparagraph (C) in
22 connection with the services provided under
23 subparagraph (A) is only available for purposes
24 of such services and shall not be disclosed to
25 the labor organization except in aggregate

1 terms that do not disclose the identity of spe-
2 cific members;

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

9 (4) where a labor organization purchases docu-
10 ments that are commercially and publicly available
11 (including newspapers, magazines, periodicals, and
12 books, but not including medical databases or court
13 records) that include family medical history; or

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

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

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

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

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

25 (D) the monitoring is in compliance with—

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

10 (ii) State genetic monitoring regula-
11 tions, in the case of a State that is imple-
12 menting genetic monitoring regulations
13 under the authority of the Occupational
14 Safety and Health Act of 1970 (29 U.S.C.
15 651 et seq.); and

16 (E) the labor organization, excluding any
17 licensed health care professional or board cer-
18 tified genetic counselor that is involved in the
19 genetic monitoring program, receives the results
20 of the monitoring only in aggregate terms that
21 do not disclose the identity of specific members;

22 (c) PRESERVATION OF PROTECTIONS.—In the case
23 of information to which any of paragraphs (1) through
24 (5) of subsection (b) applies, such information may not
25 be used in violation of paragraph (1) or (2) of subsection

1 (a) or treated or disclosed in a manner that violates sec-
2 tion 206.

3 **SEC. 205. TRAINING PROGRAMS.**

4 (a) USE OF GENETIC INFORMATION.—It shall be an
5 unlawful employment practice for any employer, labor or-
6 ganization, or joint labor-management committee control-
7 ling apprenticeship or other training or retraining, includ-
8 ing on-the-job training programs—

9 (1) to discriminate against any individual be-
10 cause of genetic information with respect to the indi-
11 vidual (or information about a request for or the re-
12 ceipt of genetic services by such individual or a fam-
13 ily member of such individual) in admission to, or
14 employment in, any program established to provide
15 apprenticeship or other training or retraining;

16 (2) to limit, segregate, or classify the applicants
17 for or participants in such apprenticeship or other
18 training or retraining, or fail or refuse to refer for
19 employment any individual, in any way that would
20 deprive or tend to deprive any individual of employ-
21 ment opportunities, or otherwise adversely affect the
22 status of the individual as an employee, because of
23 genetic information with respect to the individual (or
24 information about a request for or receipt of genetic

1 services by such individual or family member of such
2 individual); or

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

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

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; or

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;

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

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

2 (a) TREATMENT OF INFORMATION AS PART OF CON-
3 FIDENTIAL MEDICAL RECORD.—If an employer, employ-
4 ment agency, labor organization, or joint labor-manage-
5 ment committee possesses genetic information about an
6 employee or member (or information about a request for
7 or receipt of genetic services by such employee or member
8 or family member of such employee or member), such in-
9 formation shall be maintained on separate forms and in
10 separate medical files and be treated as a confidential
11 medical record of the employee or member.

12 (b) LIMITATION ON DISCLOSURE.—An employer, em-
13 ployment agency, labor organization, or joint labor-man-
14 agement committee shall not disclose genetic information
15 concerning an employee or member (or information about
16 a request for or receipt of genetic services by such em-
17 ployee or member or family member of such employee or
18 member) except—

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

23 (2) to an occupational or other health re-
24 searcher if the research is conducted in compliance
25 with the regulations and protections provided for

1 under part 46 of title 45, Code of Federal Regula-
2 tions;

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

5 (A) the employer, employment agency,
6 labor organization, or joint labor-management
7 committee may disclose only the genetic infor-
8 mation expressly authorized by such order; and

9 (B) if the court order was secured without
10 the knowledge of the employee or member to
11 whom the information refers, the employer, em-
12 ployment agency, labor organization, or joint
13 labor-management committee shall provide the
14 employee or member with adequate notice to
15 challenge the court order;

16 (4) to government officials who are inves-
17 tigating compliance with this title if the information
18 is relevant to the investigation; or

19 (5) to the extent that such disclosure is made
20 in connection with the employee's compliance with
21 the certification provisions of section 103 of the
22 Family and Medical Leave Act of 1993 (29 U.S.C.
23 2613) or such requirements under State family and
24 medical leave laws.

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 (42 U.S.C.
19 1988), shall be powers, remedies, and procedures
20 this title provides to the Commission, the Attorney
21 General, or any person, alleging such a practice.

22 (3) DAMAGES.—The powers, remedies, and pro-
23 cedures provided in section 1977A of the Revised
24 Statutes (42 U.S.C. 1981a), including the limita-
25 tions contained in subsection (b)(3) of such section
26 1977A, shall be powers, remedies, and procedures

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

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

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

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

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

10 (c) EMPLOYEES COVERED BY CONGRESSIONAL AC-
11 COUNTABILITY ACT OF 1995.—

12 (1) IN GENERAL.—The powers, remedies, and
13 procedures provided in the Congressional Account-
14 ability Act of 1995 (2 U.S.C. 1301 et seq.) to the
15 Board (as defined in section 101 of that Act (2
16 U.S.C. 1301)), or any person, alleging a violation of
17 section 201(a)(1) of that Act (42 U.S.C. 1311(a)(1))
18 shall be the powers, remedies, and procedures this
19 title provides to that Board, or any person, alleging
20 an unlawful employment practice in violation of this
21 title against an employee described in section
22 201(2)(A)(iii), except as provided in paragraphs (2)
23 and (3).

24 (2) COSTS AND FEES.—The powers, remedies,
25 and procedures provided in subsections (b) and (c)

1 of section 722 of the Revised Statutes (42 U.S.C.
2 1988), shall be powers, remedies, and procedures
3 this title provides to that Board, or any person, al-
4 leging such a practice.

5 (3) DAMAGES.—The powers, remedies, and pro-
6 cedures provided in section 1977A of the Revised
7 Statutes (42 U.S.C. 1981a), including the limita-
8 tions contained in subsection (b)(3) of such section
9 1977A, shall be powers, remedies, and procedures
10 this title provides to that Board, or any person, al-
11 leging such a practice (not an employment practice
12 specifically excluded from coverage under section
13 1977A(a)(1) of the Revised Statutes).

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

21 (d) EMPLOYEES COVERED BY CHAPTER 5 OF TITLE
22 3, UNITED STATES CODE.—

23 (1) IN GENERAL.—The powers, remedies, and
24 procedures provided in chapter 5 of title 3, United
25 States Code, to the President, the Commission, the

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

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

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

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

3 (1) IN GENERAL.—The powers, remedies, and
4 procedures provided in section 717 of the Civil
5 Rights Act of 1964 (42 U.S.C. 2000e–16) to the
6 Commission, the Attorney General, the Librarian of
7 Congress, or any person, alleging a violation of that
8 section shall be the powers, remedies, and proce-
9 dures this title provides to the Commission, the At-
10 torney General, the Librarian of Congress, or any
11 person, respectively, alleging an unlawful employ-
12 ment practice in violation of this title against an em-
13 ployee or applicant described in section
14 201(2)(A)(v), except as provided in paragraphs (2)
15 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 (42 U.S.C.
19 1988), shall be powers, remedies, and procedures
20 this title provides to the Commission, the Attorney
21 General, the Librarian of Congress, or any person,
22 alleging such a practice.

23 (3) DAMAGES.—The powers, remedies, and pro-
24 cedures provided in section 1977A of the Revised
25 Statutes (42 U.S.C. 1981a), including the limita-

1 tions contained in subsection (b)(3) of such section
2 1977A, shall be powers, remedies, and procedures
3 this title provides to the Commission, the Attorney
4 General, the Librarian of Congress, or any person,
5 alleging such a practice (not an employment practice
6 specifically excluded from coverage under section
7 1977A(a)(1) of the Revised Statutes).

8 (f) DEFINITION.—In this section, the term “Commis-
9 sion” means the Equal Employment Opportunity Commis-
10 sion.

11 **SEC. 208. DISPARATE IMPACT.**

12 (a) GENERAL RULE.—Notwithstanding any other
13 provision of this Act, “disparate impact”, as that term is
14 used in section 703(k) of the Civil Rights Act of 1964
15 (42 U.S.C. 2000e–2(k)), on the basis of genetic informa-
16 tion does not establish a cause of action under this Act.

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

25 (c) MEMBERSHIP.—

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

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

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

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

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

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

16 (F) 1 member shall be appointed by the
17 Minority Leader of the House of Representa-
18 tives;

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

23 (H) 1 member shall be appointed by the
24 ranking minority member of the Committee on

1 Education and the Workforce of the House of
2 Representatives.

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

12 (d) ADMINISTRATIVE PROVISIONS.—

13 (1) LOCATION.—The Commission shall be lo-
14 cated in a facility maintained by the Equal Employ-
15 ment Opportunity Commission.

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

21 (3) INFORMATION FROM FEDERAL AGENCIES.—
22 The Commission may secure directly from any Fed-
23 eral department or agency such information as the
24 Commission considers necessary to carry out the
25 provisions of this section. Upon request of the Com-

1 mission, the head of such department or agency
2 shall furnish such information to the Commission.

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

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

14 (e) REPORT.—Not later than 1 year after all of the
15 members are appointed to the Commission under sub-
16 section (c)(1), the Commission shall submit to Congress
17 a report that summarizes the findings of the Commission
18 and makes such recommendations for legislation as are
19 consistent with this Act.

20 (f) AUTHORIZATION OF APPROPRIATIONS.—There
21 are authorized to be appropriated to the Equal Employ-
22 ment Opportunity Commission such sums as may be nec-
23 essary to carry out this section.

24 **SEC. 209. CONSTRUCTION.**

25 Nothing in this title shall be construed to—

1 (1) limit the rights or protections of an indi-
2 vidual under the Americans with Disabilities Act of
3 1990 (42 U.S.C. 12101 et seq.), including coverage
4 afforded to individuals under section 102 of such
5 Act (42 U.S.C. 12112), or under the Rehabilitation
6 Act of 1973 (29 U.S.C. 701 et seq.);

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

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

16 (3) limit the rights or protections of an indi-
17 vidual under any other Federal or State statute that
18 provides equal or greater protection to an individual
19 than the rights or protections provided for under
20 this title;

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

23 (5) limit or expand the protections, rights, or
24 obligations of employees or employers under applica-
25 ble workers' compensation laws;

1 (6) limit the authority of a Federal department
2 or agency to conduct or sponsor occupational or
3 other health research that is conducted in compli-
4 ance with the regulations contained in part 46 of
5 title 45, Code of Federal Regulations (or any cor-
6 responding or similar regulation or rule); and

7 (7) limit the statutory or regulatory authority
8 of the Occupational Safety and Health Administra-
9 tion or the Mine Safety and Health Administration
10 to promulgate or enforce workplace safety and
11 health laws and regulations.

12 **SEC. 210. MEDICAL INFORMATION THAT IS NOT GENETIC**
13 **INFORMATION.**

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

22 **SEC. 211. REGULATIONS.**

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

1 **SEC. 212. AUTHORIZATION OF APPROPRIATIONS.**

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

5 **SEC. 213. EFFECTIVE DATE.**

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

8 **TITLE III—MISCELLANEOUS**
9 **PROVISION**

10 **SEC. 301. SEVERABILITY.**

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

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