

110TH CONGRESS  
1ST SESSION

# S. 358

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

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## IN THE SENATE OF THE UNITED STATES

JANUARY 22, 2007

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

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## 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

1 fewer side effects than current treatments. These  
2 advances give rise to the potential misuse of genetic  
3 information to discriminate in health insurance and  
4 employment.

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14 have since been repealed, and many have been modi-  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

21 (3) Although genes are facially neutral markers,  
22 many genetic conditions and disorders are associated  
23 with particular racial and ethnic groups and gender.  
24 Because some genetic traits are most prevalent in  
25 particular groups, members of a particular group

1        may be stigmatized or discriminated against as a re-  
2        sult of that genetic information. This form of dis-  
3        crimination was evident in the 1970s, which saw the  
4        advent of programs to screen and identify carriers of  
5        sickle cell anemia, a disease which afflicts African-  
6        Americans. Once again, State legislatures began to  
7        enact discriminatory laws in the area, and in the  
8        early 1970s began mandating genetic screening of  
9        all African Americans for sickle cell anemia, leading  
10       to discrimination and unnecessary fear. To alleviate  
11       some of this stigma, Congress in 1972 passed the  
12       National Sickle Cell Anemia Control Act, which  
13       withholds Federal funding from States unless sickle  
14       cell testing is voluntary.

15            (4) Congress has been informed of examples of  
16       genetic discrimination in the workplace. These in-  
17       clude the use of pre-employment genetic screening at  
18       Lawrence Berkeley Laboratory, which led to a court  
19       decision in favor of the employees in that case *Nor-*  
20       *man-Bloodsaw v. Lawrence Berkeley Laboratory*  
21       (135 F.3d 1260, 1269 (9th Cir. 1998)). Congress  
22       clearly has a compelling public interest in relieving  
23       the fear of discrimination and in prohibiting its ac-  
24       tual practice in employment and health insurance.

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

18       **TITLE           I—GENETIC           NON-**  
19       **DISCRIMINATION IN HEALTH**  
20       **INSURANCE**

21       **SEC. 101. AMENDMENTS TO EMPLOYEE RETIREMENT IN-**  
22                               **COME SECURITY ACT OF 1974.**

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

1           (1) NO ENROLLMENT RESTRICTION FOR GE-  
2           NETIC SERVICES.—Section 702(a)(1)(F) of the Em-  
3           ployee Retirement Income Security Act of 1974 (29  
4           U.S.C. 1182(a)(1)(F)) is amended by inserting be-  
5           fore the period the following: “(including informa-  
6           tion about a request for or receipt of genetic services  
7           by an individual or family member of such indi-  
8           vidual)”.

9           (2) NO DISCRIMINATION IN GROUP PREMIUMS  
10          BASED ON GENETIC INFORMATION.—Section 702(b)  
11          of the Employee Retirement Income Security Act of  
12          1974 (29 U.S.C. 1182(b)) is amended—

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

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

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

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

3 (b) LIMITATIONS ON GENETIC TESTING.—Section  
4 702 of the Employee Retirement Income Security Act of  
5 1974 (29 U.S.C. 1182) is amended by adding at the end  
6 the following:

7 “(c) GENETIC TESTING.—

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

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

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

21 “(B) limit the authority of a health care  
22 professional who is employed by or affiliated  
23 with a group health plan or a health insurance  
24 issuer and who is providing health care services  
25 to an individual as part of a bona fide wellness

1 program to notify such individual of the avail-  
2 ability of a genetic test or to provide informa-  
3 tion to such individual regarding such genetic  
4 test; or

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

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

12 (e) REMEDIES AND ENFORCEMENT.—Section 502 of  
13 the Employee Retirement Income Security Act of 1974  
14 (29 U.S.C. 1132) is amended by adding at the end the  
15 following:

16 “(n) ENFORCEMENT OF GENETIC NONDISCRIMINA-  
17 TION REQUIREMENTS.—

18 “(1) INJUNCTIVE RELIEF FOR IRREPARABLE  
19 HARM.—With respect to any violation of subsection  
20 (a)(1)(F), (b)(3), or (c) of section 702, a participant  
21 or beneficiary may seek relief under subsection  
22 502(a)(1)(B) prior to the exhaustion of available ad-  
23 ministrative remedies under section 503 if it is dem-  
24 onstrated to the court, by a preponderance of the  
25 evidence, that the exhaustion of such remedies would

1 cause irreparable harm to the health of the partici-  
 2 pant or beneficiary. Any determinations that already  
 3 have been made under section 503 in such case, or  
 4 that are made in such case while an action under  
 5 this paragraph is pending, shall be given due consid-  
 6 eration by the court in any action under this sub-  
 7 section in such case.

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

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

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

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

25 “(B) ADMINISTRATIVE PENALTY.—

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

10           “(ii) NONCOMPLIANCE PERIOD.—For  
11           purposes of clause (i), the term ‘non-  
12           compliance period’ means the period—

13                   “(I) beginning on the date that a  
14                   failure described in clause (i) occurs;  
15                   and

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

18           “(iii) PAYMENT TO PARTICIPANT OR  
19           BENEFICIARY.—A penalty collected under  
20           this subparagraph shall be paid to the par-  
21           ticipant or beneficiary involved.

22           “(3) SECRETARIAL ENFORCEMENT AUTHOR-  
23           ITY.—

24                   “(A) GENERAL RULE.—The Secretary has  
25           the authority to impose a penalty on any failure

1 of a group health plan to meet the requirements  
2 of subsection (a)(1)(F), (b)(3), or (c) of section  
3 702.

4 “(B) AMOUNT.—

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

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

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

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

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

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

24 “(I) which are not corrected be-  
25 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

10 “(II) such failure is corrected  
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  
15 known, that such failure existed.

16 “(iii) OVERALL LIMITATION FOR UN-  
17 INTENTIONAL FAILURES.—In the case of  
18 failures which are due to reasonable cause  
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               (d) DEFINITIONS.—Section 733(d) of the Employee  
12               Retirement Income Security Act of 1974 (29 U.S.C.  
13               1191b(d)) is amended by adding at the end the following:

14               “(5) 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               “(6) 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          “(7) GENETIC TEST.—

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

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

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

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

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

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

8            “(A) a genetic test;

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

11            or

12            “(C) genetic education.”

13            (e) REGULATIONS AND EFFECTIVE DATE.—

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

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

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

2 **ACT.**

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

5 (1) PROHIBITION OF HEALTH DISCRIMINATION  
6 ON THE BASIS OF GENETIC INFORMATION OR GE-  
7 NETIC SERVICES.—

8 (A) NO ENROLLMENT RESTRICTION FOR  
9 GENETIC SERVICES.—Section 2702(a)(1)(F) of  
10 the Public Health Service Act (42 U.S.C.  
11 300gg–1(a)(1)(F)) is amended by inserting be-  
12 fore the period the following: “(including infor-  
13 mation about a request for or receipt of genetic  
14 services by an individual or family member of  
15 such individual)”.

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

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

23 (ii) by adding at the end the fol-  
24 lowing:

25 “(3) NO DISCRIMINATION IN GROUP PREMIUMS  
26 BASED ON GENETIC INFORMATION.—For purposes

1 of this section, a group health plan, or a health in-  
 2 surance issuer offering group health insurance cov-  
 3 erage in connection with a group health plan, shall  
 4 not adjust premium or contribution amounts for a  
 5 group on the basis of genetic information concerning  
 6 an individual in the group or a family member of the  
 7 individual (including information about a request for  
 8 or receipt of genetic services by an individual or  
 9 family member of such individual).”.

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

14 “(c) GENETIC TESTING.—

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

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

23 “(A) limit the authority of a health care  
 24 professional who is providing health care serv-  
 25 ices with respect to an individual to request

1           that such individual or a family member of such  
2           individual undergo a genetic test;

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

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

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

19          (3) REMEDIES AND ENFORCEMENT.—Section  
20          2722(b) of the Public Health Service Act (42 U.S.C.  
21          300gg–22(b)) is amended by adding at the end the  
22          following:

23          “(3) ENFORCEMENT AUTHORITY RELATING TO  
24          GENETIC DISCRIMINATION.—

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

10           “(B) AMOUNT.—

11           “(i) IN GENERAL.—The amount of  
12           the penalty imposed under this paragraph  
13           shall be \$100 for each day in the non-  
14           compliance period with respect to each in-  
15           dividual to whom such failure relates.

16           “(ii) NONCOMPLIANCE PERIOD.—For  
17           purposes of this paragraph, the term ‘non-  
18           compliance period’ means, with respect to  
19           any failure, the period—

20                   “(I) beginning on the date such  
21                   failure first occurs; and

22                   “(II) ending on the date such  
23                   failure is corrected.

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

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

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

11                           “(II) which occurred or continued  
12                           during the period involved;

13                   the amount of penalty imposed by subpara-  
14                   graph (A) by reason of such failures with  
15                   respect to such individual shall not be less  
16                   than \$2,500.

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

25                   “(D) LIMITATIONS.—

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

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

15                   “(I) such failure was due to rea-  
16 sonable cause and not to willful ne-  
17 glect; and

18                   “(II) such failure is corrected  
19 during the 30-day period beginning on  
20 the first date the person otherwise lia-  
21 ble for such penalty knew, or exer-  
22 cising reasonable diligence would have  
23 known, that such failure existed.

24           “(iii) OVERALL LIMITATION FOR UN-  
25 INTENTIONAL FAILURES.—In the case of

1 failures which are due to reasonable cause  
 2 and not to willful neglect, the penalty im-  
 3 posed by subparagraph (A) for failures  
 4 shall not exceed the amount equal to the  
 5 lesser of—

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

11 “(II) \$500,000.

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

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

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

24 “(A) the spouse of the individual;

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

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

7           “(16) GENETIC INFORMATION.—

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

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

12                   “(ii) the genetic tests of family mem-  
13 bers of the individual; or

14                   “(iii) the occurrence of a disease or  
15 disorder in family members of the indi-  
16 vidual.

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

20           “(17) GENETIC TEST.—

21           “(A) IN GENERAL.—The term ‘genetic  
22 test’ means an analysis of human DNA, RNA,  
23 chromosomes, proteins, or metabolites, that de-  
24 tects genotypes, mutations, or chromosomal  
25 changes.

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

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

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

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

15           “(A) a genetic test;

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

18           or

19           “(C) genetic education.”.

20           (b) AMENDMENT RELATING TO THE INDIVIDUAL  
21 MARKET.—

22           (1) IN GENERAL.—The first subpart 3 of part  
23 B of title XXVII of the Public Health Service Act  
24 (42 U.S.C. 300gg–51 et seq.) (relating to other re-  
25 quirements) is amended—

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

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

4 **“SEC. 2753. PROHIBITION OF HEALTH DISCRIMINATION ON**  
5 **THE BASIS OF GENETIC INFORMATION.**

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

15 “(b) PROHIBITION ON GENETIC INFORMATION IN  
16 SETTING PREMIUM RATES.—A health insurance issuer of-  
17 fering health insurance coverage in the individual market  
18 shall not adjust premium or contribution amounts for an  
19 individual on the basis of genetic information concerning  
20 the individual or a family member of the individual (in-  
21 cluding information about a request for or receipt of ge-  
22 netic services by an individual or family member of such  
23 individual).

24 “(c) GENETIC TESTING.—

1           “(1) LIMITATION ON REQUESTING OR REQUIR-  
2           ING GENETIC TESTING.—A health insurance issuer  
3           offering health insurance coverage in the individual  
4           market shall not request or require an individual or  
5           a family member of such individual to undergo a ge-  
6           netic 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 health insurance issuer and who is pro-  
17                  viding health care services to an individual as  
18                  part of a bona fide wellness program to notify  
19                  such individual of the availability of a genetic  
20                  test or to provide information to such individual  
21                  regarding such genetic test; or

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

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

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

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

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

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

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

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

9 (d) REGULATIONS AND EFFECTIVE DATE.—

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

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

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

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

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

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

5           (a) NONDISCRIMINATION.—

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

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

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

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

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

3 (b) LIMITATIONS ON GENETIC TESTING.—

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

7 “(x) LIMITATIONS ON GENETIC TESTING.—

8 “(1) GENETIC TESTING.—

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

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

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

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

1 health care services to an individual as  
2 part of a bona fide wellness program to no-  
3 tify such individual of the availability of a  
4 genetic test or to provide information to  
5 such individual regarding such genetic test;  
6 or

7 “(iii) authorize or permit a health  
8 care professional to require that an indi-  
9 vidual undergo a genetic test.

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

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

13 “(i) the spouse of the individual;

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

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

20 “(B) GENETIC INFORMATION.—

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

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

1                   “(II) the genetic tests of family  
2                   members of the individual; or

3                   “(III) the occurrence of a disease  
4                   or disorder in family members of the  
5                   individual.

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

9                   “(C) GENETIC TEST.—

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

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

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

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

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

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

6 “(i) a genetic test;

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

10 “(iii) genetic education.

11 “(E) ISSUER OF A MEDICARE SUPPLE-  
12 MENTAL POLICY.—The term ‘issuer of a medi-  
13 care supplemental policy’ includes a third-party  
14 administrator or other person acting for or on  
15 behalf of such issuer.”.

16 (2) CONFORMING AMENDMENT.—Section  
17 1882(o) of the Social Security Act (42 U.S.C.  
18 1395ss(o)) is amended by adding at the end the fol-  
19 lowing:

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

23 (3) EFFECTIVE DATE.—The amendments made  
24 by this subsection shall apply with respect to an  
25 issuer of a medicare supplemental policy for policy

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

3 (c) TRANSITION PROVISIONS.—

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

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

1           (3) SECRETARY STANDARDS.—If the NAIC  
2 does not make the modifications described in para-  
3 graph (2) within the period specified in such para-  
4 graph, the Secretary of Health and Human Services  
5 shall, not later than October 1, 2008, make the  
6 modifications described in such paragraph and such  
7 revised regulation incorporating the modifications  
8 shall be considered to be the appropriate regulation  
9 for the purposes of such section.

10           (4) DATE SPECIFIED.—

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

14           (i) the date the State changes its stat-  
15 utes or regulations to conform its regu-  
16 latory program to the changes made by  
17 this section, or

18           (ii) October 1, 2008.

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

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

1                   (ii) having a legislature which is not  
2                   scheduled to meet in 2008 in a legislative  
3                   session in which such legislation may be  
4                   considered, the date specified in this para-  
5                   graph is the first day of the first calendar  
6                   quarter beginning after the close of the  
7                   first legislative session of the State legisla-  
8                   ture that begins on or after July 1, 2008.  
9                   For purposes of the previous sentence, in  
10                  the case of a State that has a 2-year legis-  
11                  lative session, each year of such session  
12                  shall be deemed to be a separate regular  
13                  session of the State legislature.

14 **SEC. 104. PRIVACY AND CONFIDENTIALITY.**

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

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

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

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

3           (b) COMPLIANCE WITH CERTAIN CONFIDENTIALITY  
4 STANDARDS WITH RESPECT TO GENETIC INFORMA-  
5 TION.—

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

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

24           (c) PROHIBITION ON COLLECTION OF GENETIC IN-  
25 FORMATION.—

1           (1) IN GENERAL.—A group health plan, health  
2 insurance issuer, or issuer of a medicare supple-  
3 mental policy shall not request, require, or purchase  
4 genetic information (including information about a  
5 request for or a receipt of genetic services by an in-  
6 dividual or family member of such individual) for  
7 purposes of underwriting, determinations of eligi-  
8 bility to enroll, premium rating, or the creation, re-  
9 newal or replacement of a plan, contract or coverage  
10 for health insurance or health benefits.

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

22           (3) INCIDENTAL COLLECTION.—Where a group  
23 health plan, health insurance issuer, or issuer of a  
24 medicare supplemental policy obtains genetic infor-  
25 mation incidental to the requesting, requiring, or

1 purchasing of other information concerning a partic-  
2 ipant, beneficiary, or enrollee, such request, require-  
3 ment, or purchase shall not be considered a violation  
4 of this subsection if—

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

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

12 (d) APPLICATION OF CONFIDENTIALITY STAND-  
13 ARDS.—The provisions of subsections (b) and (c) shall not  
14 apply—

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

23 (2) to genetic information that is not considered  
24 to be individually-identifiable health information  
25 under the regulations promulgated by the Secretary

1 of Health and Human Services under part C of title  
2 XI of the Social Security Act (42 U.S.C. 1320d et  
3 seq.) and section 264 of the Health Insurance Port-  
4 ability and Accountability Act of 1996 (42 U.S.C.  
5 1320d–2 note).

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

14 (f) PREEMPTION.—

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

1           (2) RULE OF CONSTRUCTION.—Nothing in  
2 paragraph (1) shall be construed to establish a pen-  
3 alty, remedy, or cause of action under State law if  
4 such penalty, remedy, or cause of action is not oth-  
5 erwise available under such State law.

6           (g) COORDINATION WITH PRIVACY REGULATIONS.—  
7 The Secretary shall implement and administer this section  
8 in a manner that is consistent with the implementation  
9 and administration by the Secretary of the regulations  
10 promulgated by the Secretary of Health and Human Serv-  
11 ices under part C of title XI of the Social Security Act  
12 (42 U.S.C. 1320d et seq.) and section 264 of the Health  
13 Insurance Portability and Accountability Act of 1996 (42  
14 U.S.C. 1320d–2 note).

15           (h) DEFINITIONS.—In this section:

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

22           (2) GROUP HEALTH PLAN; HEALTH INSURANCE  
23 ISSUER.—The terms “group health plan” and  
24 “health insurance issuer” include only those plans

1 and issuers that are covered under the regulations  
2 described in subsection (d)(1).

3 (3) ISSUER OF A MEDICARE SUPPLEMENTAL  
4 POLICY.—The term “issuer of a medicare supple-  
5 mental policy” means an issuer described in section  
6 1882 of the Social Security Act (42 U.S.C. 1395ss).

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

9 **SEC. 105. ASSURING COORDINATION.**

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

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

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

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

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

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

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

14 **TITLE II—PROHIBITING EM-**  
 15 **PLOYMENT DISCRIMINATION**  
 16 **ON THE BASIS OF GENETIC**  
 17 **INFORMATION**

18 **SEC. 201. DEFINITIONS.**

19 In this title:

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

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

1 (A) IN GENERAL.—The term “employee”  
2 means—

3 (i) an employee (including an appli-  
4 cant), as defined in section 701(f) of the  
5 Civil Rights Act of 1964 (42 U.S.C.  
6 2000e(f));

7 (ii) a State employee (including an ap-  
8 plicant) described in section 304(a) of the  
9 Government Employee Rights Act of 1991  
10 (42 U.S.C. 2000e–16c(a));

11 (iii) a covered employee (including an  
12 applicant), as defined in section 101 of the  
13 Congressional Accountability Act of 1995  
14 (2 U.S.C. 1301);

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

18 (v) an employee or applicant to which  
19 section 717(a) of the Civil Rights Act of  
20 1964 (42 U.S.C. 2000e–16(a)) applies.

21 (B) EMPLOYER.—The term “employer”  
22 means—

23 (i) an employer (as defined in section  
24 701(b) of the Civil Rights Act of 1964 (42  
25 U.S.C. 2000e(b));

1           (ii) an entity employing a State em-  
2           ployee described in section 304(a) of the  
3           Government Employee Rights Act of 1991;

4           (iii) an employing office, as defined in  
5           section 101 of the Congressional Account-  
6           ability Act of 1995;

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

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

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

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

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

22                (A) the spouse of the individual;

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

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

4 (4) GENETIC INFORMATION.—

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

8 (i) an individual’s genetic tests;

9 (ii) the genetic tests of family mem-  
10 bers of the individual; or

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

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

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

1           (6) 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           (7) GENETIC TEST.—

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

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

18 **SEC. 202. EMPLOYER PRACTICES.**

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

21           (1) to fail or refuse to hire or to discharge any  
22 employee, or otherwise to discriminate against any  
23 employee with respect to the compensation, terms,  
24 conditions, or privileges of employment of the em-  
25 ployee, because of genetic information with respect

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

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

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

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

23 (2) where—

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

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

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

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

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

1           (4) where an employer purchases documents  
2 that are commercially and publicly available (includ-  
3 ing newspapers, magazines, periodicals, and books,  
4 but not including medical databases or court  
5 records) that include family medical history; 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 employer provides written notice of  
10 the genetic monitoring to the employee;

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

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

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

17           (D) the monitoring is in compliance with—

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

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

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

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

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

21 **SEC. 203. EMPLOYMENT AGENCY PRACTICES.**

22 (a) USE OF GENETIC INFORMATION.—It shall be an  
23 unlawful employment practice for an employment agen-  
24 cy—

1           (1) to fail or refuse to refer for employment, or  
2 otherwise to discriminate against, any individual be-  
3 cause of genetic information with respect to the indi-  
4 vidual (or information about a request for or the re-  
5 ceipt of genetic services by such individual or family  
6 member of such individual);

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

19       (b) ACQUISITION OF GENETIC INFORMATION.—It  
20 shall be an unlawful employment practice for an employ-  
21 ment agency to request, require, or purchase genetic infor-  
22 mation with respect to an individual or a family member  
23 of the individual (or information about a request for the  
24 receipt of genetic services by such individual or a family  
25 member of such individual) except—

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

4           (2) where—

5                 (A) health or genetic services are offered  
6 by the employment agency, including such serv-  
7 ices offered as part of a bona fide wellness pro-  
8 gram;

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

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

18                (D) any individually identifiable genetic in-  
19 formation provided under subparagraph (C) in  
20 connection with the services provided under  
21 subparagraph (A) is only available for purposes  
22 of such services and shall not be disclosed to  
23 the employment agency except in aggregate  
24 terms that do not disclose the identity of spe-  
25 cific individuals;

1           (3) where an employment agency requests or re-  
2           quires family medical history from the individual to  
3           comply with the certification provisions of section  
4           103 of the Family and Medical Leave Act of 1993  
5           (29 U.S.C. 2613) or such requirements under State  
6           family and medical leave laws;

7           (4) where an employment agency purchases  
8           documents that are commercially and publicly avail-  
9           able (including newspapers, magazines, periodicals,  
10          and books, but not including medical databases or  
11          court records) that include family medical history; or

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

15                (A) the employment agency provides writ-  
16                ten notice of the genetic monitoring to the indi-  
17                vidual;

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

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

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

24                (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 employment agency, 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 individ-  
22 uals;

23 (c) PRESERVATION OF PROTECTIONS.—In the case  
24 of information to which any of paragraphs (1) through  
25 (5) of subsection (b) applies, such information may not

1 be used in violation of paragraph (1) or (2) of subsection  
2 (a) or treated or disclosed in a manner that violates sec-  
3 tion 206.

4 **SEC. 204. LABOR ORGANIZATION PRACTICES.**

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

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

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

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

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

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

11 (2) where—

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

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

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

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

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

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

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

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

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

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

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

7 (D) the monitoring is in compliance with—

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

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

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

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

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

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

11 (a) USE OF GENETIC INFORMATION.—It shall be an  
12 unlawful employment practice for any employer, labor or-  
13 ganization, or joint labor-management committee control-  
14 ling apprenticeship or other training or retraining, includ-  
15 ing on-the-job training programs—

16 (1) to discriminate against any individual be-  
17 cause of genetic information with respect to the indi-  
18 vidual (or information about a request for or the re-  
19 ceipt of genetic services by such individual or a fam-  
20 ily member of such individual) in admission to, or  
21 employment in, any program established to provide  
22 apprenticeship or other training or retraining;

23 (2) to limit, segregate, or classify the applicants  
24 for or participants in such apprenticeship or other  
25 training or retraining, or fail or refuse to refer for

1 employment any individual, in any way that would  
2 deprive or tend to deprive any individual of employ-  
3 ment opportunities, or otherwise adversely affect the  
4 status of the individual as an employee, because of  
5 genetic information with respect to the individual (or  
6 information about a request for or receipt of genetic  
7 services by such individual or family member of such  
8 individual); or

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

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

21 (1) where the employer, labor organization, or  
22 joint labor-management committee inadvertently re-  
23 quests or requires family medical history of the indi-  
24 vidual or family member of the individual;

25 (2) where—

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

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

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

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

24 (3) where the employer, labor organization, or  
25 joint labor-management committee requests or re-

1       quires family medical history from the individual to  
2       comply with the certification provisions of section  
3       103 of the Family and Medical Leave Act of 1993  
4       (29 U.S.C. 2613) or such requirements under State  
5       family and medical leave laws;

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

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

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

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

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

23           (C) the individual 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 employer, labor organization, or  
17 joint labor-management committee, excluding  
18 any licensed health care professional or board  
19 certified genetic counselor that is involved in  
20 the genetic monitoring program, receives the re-  
21 sults of the monitoring only in aggregate terms  
22 that do not disclose the identity of specific indi-  
23 viduals;

24 (c) PRESERVATION OF PROTECTIONS.—In the case  
25 of information to which any of paragraphs (1) through

1 (5) of subsection (b) applies, such information may not  
2 be used in violation of paragraph (1) or (2) of subsection  
3 (a) or treated or disclosed in a manner that violates sec-  
4 tion 206.

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

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

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

23 (1) to the employee (or family member if the  
24 family member is receiving the genetic services) or

1 member of a labor organization at the request of the  
2 employee or member of such organization;

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

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

10 (A) the employer, employment agency,  
11 labor organization, or joint labor-management  
12 committee may disclose only the genetic infor-  
13 mation expressly authorized by such order; and

14 (B) if the court order was secured without  
15 the knowledge of the employee or member to  
16 whom the information refers, the employer, em-  
17 ployment agency, labor organization, or joint  
18 labor-management committee shall provide the  
19 employee or member with adequate notice to  
20 challenge the court order;

21 (4) to government officials who are inves-  
22 tigating compliance with this title if the information  
23 is relevant to the investigation; or

24 (5) to the extent that such disclosure is made  
25 in connection with the employee's compliance with

1 the certification provisions of section 103 of the  
2 Family and Medical Leave Act of 1993 (29 U.S.C.  
3 2613) or such requirements under State family and  
4 medical leave laws.

5 **SEC. 207. REMEDIES AND ENFORCEMENT.**

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

8 (1) IN GENERAL.—The powers, remedies, and  
9 procedures provided in sections 705, 706, 707, 709,  
10 710, and 711 of the Civil Rights Act of 1964 (42  
11 U.S.C. 2000e–4 et seq.) to the Commission, the At-  
12 torney General, or any person, alleging a violation of  
13 title VII of that Act (42 U.S.C. 2000e et seq.) shall  
14 be the powers, remedies, and procedures this title  
15 provides to the Commission, the Attorney General,  
16 or any person, respectively, alleging an unlawful em-  
17 ployment practice in violation of this title against an  
18 employee described in section 201(2)(A)(i), except as  
19 provided 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, the Attorney  
25 General, or any person, 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, the Attorney  
7           General, or any person, alleging such a practice (not  
8           an employment practice specifically excluded from  
9           coverage under section 1977A(a)(1) of the Revised  
10          Statutes).

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

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

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

7           (3) DAMAGES.—The powers, remedies, and pro-  
8           cedures provided in section 1977A of the Revised  
9           Statutes (42 U.S.C. 1981a), including the limita-  
10          tions contained in subsection (b)(3) of such section  
11          1977A, shall be powers, remedies, and procedures  
12          this title provides to the Commission, or any person,  
13          alleging such a practice (not an employment practice  
14          specifically excluded from coverage under section  
15          1977A(a)(1) of the Revised Statutes).

16          (c) EMPLOYEES COVERED BY CONGRESSIONAL AC-  
17          COUNTABILITY ACT OF 1995.—

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

1 an unlawful employment practice in violation of this  
2 title against an employee described in section  
3 201(2)(A)(iii), except as provided in paragraphs (2)  
4 and (3).

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

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

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

1 with respect to a claim alleging a violation of section  
2 201(a)(1) of such Act (2 U.S.C. 1311(a)(1)).

3 (d) EMPLOYEES COVERED BY CHAPTER 5 OF TITLE  
4 3, UNITED STATES CODE.—

5 (1) IN GENERAL.—The powers, remedies, and  
6 procedures provided in chapter 5 of title 3, United  
7 States Code, to the President, the Commission, the  
8 Merit Systems Protection Board, or any person, al-  
9 leging a violation of section 411(a)(1) of that title,  
10 shall be the powers, remedies, and procedures this  
11 title provides to the President, the Commission, such  
12 Board, or any person, respectively, alleging an un-  
13 lawful employment practice in violation of this title  
14 against an employee described in section  
15 201(2)(A)(iv), except as provided in paragraphs (2)  
16 and (3).

17 (2) COSTS AND FEES.—The powers, remedies,  
18 and procedures provided in subsections (b) and (c)  
19 of section 722 of the Revised Statutes (42 U.S.C.  
20 1988), 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 (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 President, the Commission,  
4 such Board, or any person, alleging such a practice  
5 (not an employment practice specifically excluded  
6 from coverage under section 1977A(a)(1) of the Re-  
7 vised Statutes).

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

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

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

1 1988), shall be powers, remedies, and procedures  
2 this title provides to the Commission, the Attorney  
3 General, the Librarian of Congress, or any person,  
4 alleging 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 the Commission, the Attorney  
11 General, the Librarian of Congress, or any person,  
12 alleging such a practice (not an employment practice  
13 specifically excluded from coverage under section  
14 1977A(a)(1) of the Revised Statutes).

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

18 **SEC. 208. DISPARATE IMPACT.**

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

24 (b) COMMISSION.—On the date that is 6 years after  
25 the date of enactment of this Act, there shall be estab-

1 lished a commission, to be known as the Genetic Non-  
2 discrimination Study Commission (referred to in this sec-  
3 tion as the “Commission”) to review the developing  
4 science of genetics and to make recommendations to Con-  
5 gress regarding whether to provide a disparate impact  
6 cause of action under this Act.

7 (c) MEMBERSHIP.—

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

10 (A) 1 member shall be appointed by the  
11 majority leader of the Senate;

12 (B) 1 member shall be appointed by the  
13 minority leader of the Senate;

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

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

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

23 (F) 1 member shall be appointed by the  
24 minority leader of the House of Representa-  
25 tives;

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

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

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

18          (d) ADMINISTRATIVE PROVISIONS.—

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

22               (2) DETAIL OF GOVERNMENT EMPLOYEES.—  
23               Any Federal Government employee may be detailed  
24               to the Commission without reimbursement, and such

1 detail shall be without interruption or loss of civil  
2 service status or privilege.

3 (3) INFORMATION FROM FEDERAL AGENCIES.—

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

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

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

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

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

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

7 **SEC. 209. CONSTRUCTION.**

8 Nothing in this title shall be construed to—

9 (1) limit the rights or protections of an indi-  
10 vidual under the Americans with Disabilities Act of  
11 1990 (42 U.S.C. 12101 et seq.), including coverage  
12 afforded to individuals under section 102 of such  
13 Act (42 U.S.C. 12112), or under the Rehabilitation  
14 Act of 1973 (29 U.S.C. 701 et seq.);

15 (2)(A) limit the rights or protections of an indi-  
16 vidual to bring an action under this title against an  
17 employer, employment agency, labor organization, or  
18 joint labor-management committee for a violation of  
19 this title; or

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

24 (3) limit the rights or protections of an indi-  
25 vidual under any other Federal or State statute that

1 provides equal or greater protection to an individual  
2 than the rights or protections provided for under  
3 this title;

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

6 (5) limit or expand the protections, rights, or  
7 obligations of employees or employers under applica-  
8 ble workers' compensation laws;

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

15 (7) limit the statutory or regulatory authority  
16 of the Occupational Safety and Health Administra-  
17 tion or the Mine Safety and Health Administration  
18 to promulgate or enforce workplace safety and  
19 health laws and regulations.

20 **SEC. 210. MEDICAL INFORMATION THAT IS NOT GENETIC**  
21 **INFORMATION.**

22 An employer, employment agency, labor organization,  
23 or joint labor-management committee shall not be consid-  
24 ered to be in violation of this title based on the use, acqui-  
25 sition, or disclosure of medical information that is not ge-

1 netic information about a manifested disease, disorder, or  
 2 pathological condition of an employee or member, includ-  
 3 ing a manifested disease, disorder, or pathological condi-  
 4 tion that has or may have a genetic basis.

5 **SEC. 211. REGULATIONS.**

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

9 **SEC. 212. AUTHORIZATION OF APPROPRIATIONS.**

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

13 **SEC. 213. EFFECTIVE DATE.**

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

16 **TITLE III—MISCELLANEOUS**  
 17 **PROVISION**

18 **SEC. 301. SEVERABILITY.**

19 If any provision of this Act, an amendment made by  
 20 this Act, or the application of such provision or amend-  
 21 ment to any person or circumstance is held to be unconsti-  
 22 tutional, the remainder of this Act, the amendments made  
 23 by this Act, and the application of such provisions to any  
 24 person or circumstance shall not be affected thereby.

○