

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 493  
OFFERED BY MR. RANGEL OF NEW YORK**

Strike all after the enacting clause and insert the following:

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

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

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

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

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

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

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

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

Sec. 213. Effective date.

TITLE III—MISCELLANEOUS PROVISION

Sec. 301. Severability.

1 **SEC. 2. FINDINGS.**

2 Congress makes the following findings:

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

17 (2) The early science of genetics became the  
18 basis of State laws that provided for the sterilization  
19 of persons having presumed genetic “defects” such  
20 as mental retardation, mental disease, epilepsy,  
21 blindness, and hearing loss, among other conditions.  
22 The first sterilization law was enacted in the State  
23 of Indiana in 1907. By 1981, a majority of States

1        adopted sterilization laws to “correct” apparent ge-  
2        netic traits or tendencies. Many of these State laws  
3        have since been repealed, and many have been modi-  
4        fied to include essential constitutional requirements  
5        of due process and equal protection. However, the  
6        current explosion in the science of genetics, and the  
7        history of sterilization laws by the States based on  
8        early genetic science, compels Congressional action  
9        in this area.

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

1 National Sickle Cell Anemia Control Act, which  
2 withholds Federal funding from States unless sickle  
3 cell testing is voluntary.

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

14 (5) Federal law addressing genetic discrimina-  
15 tion in health insurance and employment is incom-  
16 plete in both the scope and depth of its protections.  
17 Moreover, while many States have enacted some type  
18 of genetic non-discrimination law, these laws vary  
19 widely with respect to their approach, application,  
20 and level of protection. Congress has collected sub-  
21 stantial evidence that the American public and the  
22 medical community find the existing patchwork of  
23 State and Federal laws to be confusing and inad-  
24 equate to protect them from discrimination. There-  
25 fore Federal legislation establishing a national and

1 uniform basic standard is necessary to fully protect  
2 the public from discrimination and allay their con-  
3 cerns about the potential for discrimination, thereby  
4 allowing individuals to take advantage of genetic  
5 testing, technologies, research, and new therapies.

6 **TITLE I—GENETIC NON-**  
7 **DISCRIMINATION IN HEALTH**  
8 **INSURANCE**

9 **SEC. 101. AMENDMENTS TO EMPLOYEE RETIREMENT IN-**  
10 **COME SECURITY ACT OF 1974.**

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

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

22 (2) NO DISCRIMINATION IN GROUP PREMIUMS  
23 BASED ON GENETIC INFORMATION.—Section 702(b)  
24 of the Employee Retirement Income Security Act of  
25 1974 (29 U.S.C. 1182(b)) is amended—

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

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

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

16 (b) LIMITATIONS ON GENETIC TESTING.—Section  
17 702 of the Employee Retirement Income Security Act of  
18 1974 (29 U.S.C. 1182) is amended by adding at the end  
19 the following:

20 “(c) GENETIC TESTING.—

21 “(1) LIMITATION ON REQUESTING OR REQUIR-  
22 ING GENETIC TESTING.—A group health plan, or a  
23 health insurance issuer offering health insurance  
24 coverage in connection with a group health plan,

1 shall not request or require an individual or a family  
2 member of such individual to undergo a genetic test.

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

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

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

19 “(C) authorize or permit a health care pro-  
20 fessional to require that an individual undergo  
21 a genetic test.

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

1 (c) REMEDIES AND ENFORCEMENT.—Section 502 of  
2 the Employee Retirement Income Security Act of 1974  
3 (29 U.S.C. 1132) is amended by adding at the end the  
4 following:

5 “(n) ENFORCEMENT OF GENETIC NONDISCRIMINA-  
6 TION REQUIREMENTS.—

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

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

24 “(A) REINSTATEMENT OF BENEFITS  
25 WHERE EQUITABLE RELIEF HAS BEEN AWARD-

1 ED.—The recovery of benefits by a participant  
2 or beneficiary under a civil action under this  
3 section may include an administrative penalty  
4 under subparagraph (B) and the retroactive re-  
5 instatement of coverage under the plan involved  
6 to the date on which the participant or bene-  
7 ficiary was denied eligibility for coverage if—

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

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

14 “(B) ADMINISTRATIVE PENALTY.—

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

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

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

7                   “(II) ending on the date that  
8 such failure is corrected.

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

13           “(3) SECRETARIAL ENFORCEMENT AUTHOR-  
14 ITY.—

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

20                   “(B) AMOUNT.—

21                   “(i) IN GENERAL.—The amount of  
22 the penalty imposed by subparagraph (A)  
23 shall be \$100 for each day in the non-  
24 compliance period with respect to each in-  
25 dividual to whom such failure relates.

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

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

7                   “(II) ending on the date such  
8 failure is corrected.

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

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

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

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

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

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

9           “(D) LIMITATIONS.—

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

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

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

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

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

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

22                   “(II) \$500,000.

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

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

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

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

10 “(A) the spouse of the individual;

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

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

17 “(6) GENETIC INFORMATION.—

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

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

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

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

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

7                   “(7) GENETIC TEST.—

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

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

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

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

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

3           “(A) a genetic test;

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

6           or

7           “(C) genetic education.”.

8           (e) REGULATIONS AND EFFECTIVE DATE.—

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

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

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

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

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

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

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

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

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

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

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

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

8 “(c) GENETIC TESTING.—

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

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

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

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

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

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

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

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

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

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

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

3 “(B) AMOUNT.—

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

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

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

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

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

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

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

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

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

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

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

17 “(D) LIMITATIONS.—

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

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

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

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

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

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

16                         “(A) the spouse of the individual;

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

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

23                  “(16) GENETIC INFORMATION.—

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

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

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

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

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

13           “(17) GENETIC TEST.—

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

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

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

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

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

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

8            “(A) a genetic test;

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

12            “(C) genetic education.”

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

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

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

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

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

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

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

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

17 “(c) GENETIC TESTING.—

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

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

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

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

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

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

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

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

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

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

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

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

25 (d) REGULATIONS AND EFFECTIVE DATE.—

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

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

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

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

19   **SEC. 103. AMENDMENTS TO THE INTERNAL REVENUE CODE**  
20                   **OF 1986.**

21           (a) NO DISCRIMINATION IN GROUP PREMIUMS  
22    BASED ON GENETIC INFORMATION.—Subsection (b) of  
23    section 9802 of the Internal Revenue Code of 1986 is  
24    amended—

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

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

5           “(3) NO GROUP-BASED DISCRIMINATION ON  
6           BASIS OF GENETIC INFORMATION.—For purposes of  
7           this section, a group health plan may not adjust pre-  
8           mium or contribution amounts for the group covered  
9           under such plan on the basis of genetic informa-  
10          tion.”.

11          (b) LIMITATIONS ON GENETIC TESTING AND COL-  
12          LECTION OF GENETIC INFORMATION.—Section 9802 of  
13          such Code is amended by redesignating subsection (c) as  
14          subsection (f) and by inserting after subsection (b) the fol-  
15          lowing new subsections:

16          “(c) GENETIC TESTING.—

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

21                 “(2) EXCEPTION FOR HEALTH CARE PROFES-  
22                 SIONALS.—Paragraph (1) shall not be construed to  
23                 limit the authority of a health care professional who  
24                 is providing health care services to an individual to  
25                 request that such individual undergo a genetic test.

1           “(3) PROVISION OF INFORMATION NOT PROHIB-  
2           ITED.—Paragraph (1) shall not be construed to limit  
3           the authority of a group health plan—

4                   “(A) to provide information generally  
5                   about the availability of genetic tests, or

6                   “(B) to provide information about genetic  
7                   tests to a health care professional with respect  
8                   to the treatment of an individual to whom such  
9                   professional is providing health care services.

10          “(d) PROHIBITION ON COLLECTION OF GENETIC IN-  
11          FORMATION.—

12                   “(1) IN GENERAL.—A group health plan shall  
13                   not request, require, or purchase genetic information  
14                   for purposes of underwriting (as defined in section  
15                   9832).

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

22                   “(3) INCIDENTAL COLLECTION.—If a group  
23                   health plan obtains genetic information incidental to  
24                   the requesting, requiring, or purchasing of other in-  
25                   formation concerning any individual, such request,

1 requirement, or purchase shall not be considered a  
2 violation of paragraph (2) if such request, require-  
3 ment, or purchase is not in violation of paragraph  
4 (1).

5 “(e) APPLICATION TO ALL PLANS.—The provisions  
6 of subsections (a)(1)(F), (b)(3), (c), and (d) shall apply  
7 to group health plans without regard to section 9831(a).”.

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

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

12 “(A) a dependent (as such term is used for  
13 purposes of section 9801(f)(2)) of such indi-  
14 vidual, and

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

19 “(7) GENETIC INFORMATION.—

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

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

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

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

4                   “(B) INCLUSION OF GENETIC SERVICES  
5                   AND PARTICIPATION IN GENETIC RESEARCH.—  
6                   Such term includes, with respect to any indi-  
7                   vidual, any request for genetic services, receipt  
8                   of genetic services, or participation in any clin-  
9                   ical research, or any other program, which in-  
10                  cludes genetic services, by such individual or  
11                  any family member of such individual.

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

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

24                  “(8) GENETIC TEST.—

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

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

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

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

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

20                   “(A) a genetic test,

21                   “(B) genetic counseling (such as obtaining,  
22 interpreting, or assessing genetic information),  
23 and

24                   “(C) genetic education.

1           “(10) UNDERWRITING.—The term ‘under-  
2           writing’ means, with respect to any group health  
3           plan—

4                   “(A) rules for eligibility (including enroll-  
5                   ment and continued eligibility) for, or deter-  
6                   mination of, benefits under the plan,

7                   “(B) the computation of premium or con-  
8                   tribution amounts under the plan,

9                   “(C) the application of any pre-existing  
10                  condition exclusion under the plan, and

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

14           (d) ENFORCEMENT.—

15                   (1) IN GENERAL.—Subchapter C of chapter  
16                   100 of the Internal Revenue Code of 1986 (relating  
17                   to general provisions) is amended by adding at the  
18                   end the following new section:

19           **“SEC. 9834. ENFORCEMENT.**

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

23                   (2) CONFORMING AMENDMENT.—The table of  
24                   sections for subchapter C of chapter 100 of such

1 Code is amended by adding at the end the following  
2 new item:

“Sec. 9834. Enforcement.”.

3 (e) REGULATIONS AND EFFECTIVE DATE.—

4 (1) REGULATIONS.—The Secretary of the  
5 Treasury shall issue regulations or other guidance  
6 not later than 1 year after the date of the enactment  
7 of this Act to carry out the amendments made by  
8 this section.

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

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

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

19 “(E) An issuer of a medicare supplemental  
20 policy shall not deny or condition the issuance  
21 or effectiveness of the policy (including the im-  
22 position of any exclusion of benefits under the  
23 policy based on a pre-existing condition) and  
24 shall not discriminate in the pricing of the pol-  
25 icy (including the adjustment of premium rates)

1           of an individual on the basis of the genetic in-  
2           formation with respect to such individual.”.

3           (b) LIMITATIONS ON GENETIC TESTING AND COL-  
4           LECTION OF GENETIC INFORMATION.—

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

8           “(x) LIMITATIONS ON GENETIC TESTING AND COL-  
9           LECTION OF GENETIC INFORMATION.—

10           “(1) GENETIC TESTING.—

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

16           “(B) EXCEPTION FOR HEALTH CARE PRO-  
17           FESSIONALS.—Subparagraph (A) shall not be  
18           construed to limit the authority of a health care  
19           professional who is providing health care serv-  
20           ices to an individual to request that such indi-  
21           vidual undergo a genetic test.

22           “(C) PROVISION OF INFORMATION NOT  
23           PROHIBITED.—Subparagraph (A) shall not be  
24           construed to limit the authority of an issuer of  
25           a medicare supplemental policy—

1 “(i) to provide information generally  
2 about the availability of genetic tests, or

3 “(ii) to provide information about ge-  
4 netic tests to a health care professional  
5 with respect to the treatment of an indi-  
6 vidual to whom such professional is pro-  
7 viding health care services.

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

10 “(A) IN GENERAL.—An issuer of a medi-  
11 care supplemental policy shall not request, re-  
12 quire, or purchase genetic information for pur-  
13 poses of underwriting.

14 “(B) LIMITATION RELATING TO THE COL-  
15 LECTION OF GENETIC INFORMATION PRIOR TO  
16 ENROLLMENT.—An issuer of a medicare supple-  
17 mental policy shall not request, require, or pur-  
18 chase genetic information concerning any indi-  
19 vidual prior to such individual’s enrollment  
20 under the policy or in connection with such en-  
21 rollment.

22 “(C) INCIDENTAL COLLECTION.—Where  
23 an issuer of a medicare supplemental policy ob-  
24 tains genetic information incidental to the re-  
25 questing, requiring, or purchasing of other in-

1           formation concerning an enrollee, such request,  
2           requirement, or purchase shall not be consid-  
3           ered a violation of this paragraph if such re-  
4           quest, requirement, or purchase is not in viola-  
5           tion of subparagraph (A).

6           “(3) DEFINITIONS.—In this subsection and  
7           subsection (s)(2)(E):

8                   “(A) FAMILY MEMBER.—The term ‘family  
9                   member’ means, with respect to any individual,  
10                  any individual who is a first-degree, second-de-  
11                  gree, third-degree, or fourth-degree relative of  
12                  such individual.

13                  “(B) GENETIC INFORMATION.—

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

17                           “(I) such individual’s genetic  
18                           tests;

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

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

24                   “(ii) INCLUSION OF GENETIC SERV-  
25                   ICES AND PARTICIPATION IN GENETIC RE-

1 SEARCH.—Such term includes, with respect  
2 to any individual, any request for genetic  
3 services, receipt of genetic services, or par-  
4 ticipation in any clinical research, or any  
5 other program, which includes genetic serv-  
6 ices, by such individual or any family mem-  
7 ber of such individual.

8 “(iii) EXCLUSIONS.—The term ‘ge-  
9 netic information’ shall not include infor-  
10 mation about the sex or age of an indi-  
11 vidual.

12 “(C) GENETIC TEST.—

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

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

20 “(I) an analysis of proteins or  
21 metabolites that does not detect  
22 genotypes, mutations, or chromosomal  
23 changes; or

24 “(II) an analysis of proteins or  
25 metabolites that is directly related to

1 a manifested disease, disorder, or  
2 pathological condition that could rea-  
3 sonably be detected by a health care  
4 professional with appropriate training  
5 and expertise in the field of medicine  
6 involved.

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

9 “(i) a genetic test;

10 “(ii) genetic counseling (such as ob-  
11 taining, interpreting, or assessing genetic  
12 information); and

13 “(iii) genetic education.

14 “(E) UNDERWRITING.—The term ‘under-  
15 writing’ means, with respect to a medicare sup-  
16 plemental policy—

17 “(i) rules for eligibility (including en-  
18 rollment and continued eligibility) for, or  
19 determination of, benefits under the policy;

20 “(ii) the computation of premium or  
21 contribution amounts under the policy;

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

1                   “(iv) other activities related to the  
2                   creation, renewal, or replacement of a con-  
3                   tract of health insurance or health bene-  
4                   fits.

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

10                  (2) CONFORMING AMENDMENT.—Section  
11                  1882(o) of such Act (42 U.S.C. 1395ss(o)) is  
12                  amended by adding at the end the following:

13                         “(4) The issuer of the medicare supplemental  
14                         policy (as defined in subsection (x)) complies with  
15                         subsection (s)(2)(E) and subsection (x).”.

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

21                  (d) TRANSITION PROVISIONS.—

22                         (1) IN GENERAL.—If the Secretary of Health  
23                         and Human Services identifies a State as requiring  
24                         a change to its statutes or regulations to conform its  
25                         regulatory program to the changes made by this sec-

1       tion, the State regulatory program shall not be con-  
2       sidered to be out of compliance with the require-  
3       ments of section 1882 of the Social Security Act due  
4       solely to failure to make such change until the date  
5       specified in paragraph (4).

6               (2) NAIC STANDARDS.—If, not later than June  
7       30, 2008, the National Association of Insurance  
8       Commissioners (in this subsection referred to as the  
9       “NAIC”) modifies its NAIC Model Regulation relat-  
10      ing to section 1882 of the Social Security Act (re-  
11      ferred to in such section as the 1991 NAIC Model  
12      Regulation, as subsequently modified) to conform to  
13      the amendments made by this section, such revised  
14      regulation incorporating the modifications shall be  
15      considered to be the applicable NAIC model regula-  
16      tion (including the revised NAIC model regulation  
17      and the 1991 NAIC Model Regulation) for the pur-  
18      poses of such section.

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

1 shall be considered to be the appropriate regulation  
2 for the purposes of such section.

3 (4) DATE SPECIFIED.—

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

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

11 (ii) October 1, 2008.

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

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

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

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

7   **SEC. 105. PRIVACY AND CONFIDENTIALITY.**

8           Part C of title XI of the Social Security Act is amend-  
9   ed by adding at the end the following new section:

10    “APPLICATION OF HIPAA REGULATIONS TO GENETIC  
11   INFORMATION

12    “SEC. 1180. (a) IN GENERAL.—The Secretary of  
13   Health and Human Services shall revise the HIPAA pri-  
14   vacy regulation (as defined in subsection (b)) so it is con-  
15   sistent with the following:

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

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

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

1           “(1) GENETIC INFORMATION; GENETIC TEST;  
2           FAMILY MEMBER.—The terms ‘genetic information’,  
3           ‘genetic test’, and ‘family member’ have the mean-  
4           ings given such terms in section 2791 of the Public  
5           Health Service Act (42 U.S.C. 300gg-91), as amend-  
6           ed by the Genetic Information Nondiscrimination  
7           Act of 2007.

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

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

22          “(4) UNDERWRITING PURPOSES.—The term  
23          ‘underwriting purposes’ means, with respect to a  
24          group health plan, health insurance coverage, or a  
25          medicare supplemental policy—

1           “(A) rules for eligibility (including enroll-  
2           ment and continued eligibility) for, or deter-  
3           mination of, benefits under the plan, coverage,  
4           or policy;

5           “(B) the computation of premium or con-  
6           tribution amounts under the plan, coverage, or  
7           policy;

8           “(C) the application of any pre-existing  
9           condition exclusion under the plan, coverage, or  
10          policy; and

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

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

21 **SEC. 106. ASSURING COORDINATION.**

22          (a) IN GENERAL.—Except as provided in subsection  
23 (b), the Secretary of the Treasury, the Secretary of Health  
24 and Human Services, and the Secretary of Labor shall en-

1 sure, through the execution of an interagency memo-  
2 randum of understanding among such Secretaries, that—

3           (1) regulations, rulings, and interpretations  
4 issued by such Secretaries relating to the same mat-  
5 ter over which two or more such Secretaries have re-  
6 sponsibility under this title (and the amendments  
7 made by this title) are administered so as to have  
8 the same effect at all times; and

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

14       (b) **AUTHORITY OF THE SECRETARY.**—The Secretary  
15 of Health and Human Services has the sole authority to  
16 promulgate regulations to implement the amendment  
17 made by section 104.

18 **SEC. 107. REGULATIONS; EFFECTIVE DATE.**

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

24       (b) **EFFECTIVE DATE.**—Except as provided in sec-  
25 tion 103, the amendments made by this title shall take

1 effect on the date that is 18 months after the date of en-  
2 actment of this Act.

3 **TITLE II—PROHIBITING EM-**  
4 **PLOYMENT DISCRIMINATION**  
5 **ON THE BASIS OF GENETIC**  
6 **INFORMATION**

7 **SEC. 201. DEFINITIONS.**

8 In this title:

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

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

15 (A) IN GENERAL.—The term “employee”  
16 means—

17 (i) an employee (including an appli-  
18 cant), as defined in section 701(f) of the  
19 Civil Rights Act of 1964 (42 U.S.C.  
20 2000e(f));

21 (ii) a State employee (including an ap-  
22 plicant) described in section 304(a) of the  
23 Government Employee Rights Act of 1991  
24 (42 U.S.C. 2000e–16e(a));

1 (iii) a covered employee (including an  
2 applicant), as defined in section 101 of the  
3 Congressional Accountability Act of 1995  
4 (2 U.S.C. 1301);

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

8 (v) an employee or applicant to which  
9 section 717(a) of the Civil Rights Act of  
10 1964 (42 U.S.C. 2000e–16(a)) applies.

11 (B) EMPLOYER.—The term “employer”  
12 means—

13 (i) an employer (as defined in section  
14 701(b) of the Civil Rights Act of 1964 (42  
15 U.S.C. 2000e(b));

16 (ii) an entity employing a State em-  
17 ployee described in section 304(a) of the  
18 Government Employee Rights Act of 1991;

19 (iii) an employing office, as defined in  
20 section 101 of the Congressional Account-  
21 ability Act of 1995;

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

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

3 (C) EMPLOYMENT AGENCY; LABOR ORGA-  
4 NIZATION.—The terms “employment agency”  
5 and “labor organization” have the meanings  
6 given the terms in section 701 of the Civil  
7 Rights Act of 1964 (42 U.S.C. 2000e).

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

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

13 (A) the spouse of the individual;

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

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

20 (4) GENETIC INFORMATION.—

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

24 (i) an individual’s genetic tests;

1 (ii) the genetic tests of family mem-  
2 bers of the individual; or

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

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

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

18 (6) GENETIC SERVICES.—The term “genetic  
19 services” means—

20 (A) a genetic test;

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

23 or

24 (C) genetic education.

25 (7) GENETIC TEST.—

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

6 (B) EXCEPTION.—The term “genetic test”  
7 does not mean an analysis of proteins or me-  
8 tabolites that does not detect genotypes,  
9 mutations, or chromosomal changes.

10 **SEC. 202. EMPLOYER PRACTICES.**

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

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

21 (2) to limit, segregate, or classify the employees  
22 of the employer in any way that would deprive or  
23 tend to deprive any employee of employment oppor-  
24 tunities or otherwise adversely affect the status of  
25 the employee as an employee, because of genetic in-

1           formation with respect to the employee (or informa-  
2           tion about a request for or the receipt of genetic  
3           services by such employee or family member of such  
4           employee).

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

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

15                   (2) where—

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

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

21                           (C) only the employee (or family member  
22                           if the family member is receiving genetic serv-  
23                           ices) and the licensed health care professional  
24                           or board certified genetic counselor involved in  
25                           providing such services receive individually iden-

1           tifiable information concerning the results of  
2           such services; and

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

10           (3) where an employer requests or requires  
11           family medical history from the employee to comply  
12           with the certification provisions of section 103 of the  
13           Family and Medical Leave Act of 1993 (29 U.S.C.  
14           2613) or such requirements under State family and  
15           medical leave laws;

16           (4) where an employer purchases documents  
17           that are commercially and publicly available (includ-  
18           ing newspapers, magazines, periodicals, and books,  
19           but not including medical databases or court  
20           records) that include family medical history; or

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

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

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

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

5 (C) the employee 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 employer, excluding any licensed  
24 health care professional or board certified ge-  
25 netic counselor that is involved in the genetic

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

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. 203. EMPLOYMENT AGENCY PRACTICES.**

11 (a) USE OF GENETIC INFORMATION.—It shall be an  
12 unlawful employment practice for an employment agen-  
13 cy—

14 (1) to fail or refuse to refer for employment, or  
15 otherwise to discriminate against, any individual be-  
16 cause of genetic information with respect to the indi-  
17 vidual (or information about a request for or the re-  
18 ceipt of genetic services by such individual or family  
19 member of such individual);

20 (2) to limit, segregate, or classify individuals or  
21 fail or refuse to refer for employment any individual  
22 in any way that would deprive or tend to deprive any  
23 individual of employment opportunities, or otherwise  
24 adversely affect the status of the individual as an  
25 employee, because of genetic information with re-

1       spect to the individual (or information about a re-  
2       quest for or the receipt of genetic services by such  
3       individual or family member of such individual); or  
4               (3) to cause or attempt to cause an employer to  
5       discriminate against an individual in violation of this  
6       title.

7       (b) ACQUISITION OF GENETIC INFORMATION.—It  
8       shall be an unlawful employment practice for an employ-  
9       ment agency to request, require, or purchase genetic infor-  
10      mation with respect to an individual or a family member  
11      of the individual (or information about a request for the  
12      receipt of genetic services by such individual or a family  
13      member of such individual) except—

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

17               (2) where—

18                       (A) health or genetic services are offered  
19      by the employment agency, including such serv-  
20      ices offered as part of a bona fide wellness pro-  
21      gram;

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

24                       (C) only the individual (or family member  
25      if the family member is receiving genetic serv-

1           ices) and the licensed health care professional  
2           or board certified genetic counselor involved in  
3           providing such services receive individually iden-  
4           tifiable information concerning the results of  
5           such services; and

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

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

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

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

4 (A) the employment agency provides writ-  
5 ten notice of the genetic monitoring to the indi-  
6 vidual;

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

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

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

13 (D) the monitoring is in compliance with—

14 (i) any Federal genetic monitoring  
15 regulations, including any such regulations  
16 that may be promulgated by the Secretary  
17 of Labor pursuant to the Occupational  
18 Safety and Health Act of 1970 (29 U.S.C.  
19 651 et seq.), the Federal Mine Safety and  
20 Health Act of 1977 (30 U.S.C. 801 et  
21 seq.), or the Atomic Energy Act of 1954  
22 (42 U.S.C. 2011 et seq.); or

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

1 under the authority of the Occupational  
2 Safety and Health Act of 1970 (29 U.S.C.  
3 651 et seq.); and

4 (E) the employment agency, excluding any  
5 licensed health care professional or board cer-  
6 tified genetic counselor that is involved in the  
7 genetic monitoring program, receives the results  
8 of the monitoring only in aggregate terms that  
9 do not disclose the identity of specific individ-  
10 uals;

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

17 **SEC. 204. LABOR ORGANIZATION PRACTICES.**

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

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

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

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

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

21           (1) where a labor organization inadvertently re-  
22 quests or requires family medical history of the  
23 member or family member of the member;

24           (2) where—

1 (A) health or genetic services are offered  
2 by the labor organization, including such serv-  
3 ices offered as part of a bona fide wellness pro-  
4 gram;

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

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

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

22 (3) where a labor organization requests or re-  
23 quires family medical history from the members to  
24 comply with the certification provisions of section  
25 103 of the Family and Medical Leave Act of 1993

1 (29 U.S.C. 2613) or such requirements under State  
2 family and medical leave laws;

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

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

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

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

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

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

19 (D) the monitoring is in compliance with—

20 (i) any Federal genetic monitoring  
21 regulations, including any such regulations  
22 that may be promulgated by the Secretary  
23 of Labor pursuant to the Occupational  
24 Safety and Health Act of 1970 (29 U.S.C.  
25 651 et seq.), the Federal Mine Safety and

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

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

10 (E) the labor organization, excluding any  
11 licensed health care professional or board cer-  
12 tified genetic counselor that is involved in the  
13 genetic monitoring program, receives the results  
14 of the monitoring only in aggregate terms that  
15 do not disclose the identity of specific members;

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

22 **SEC. 205. TRAINING PROGRAMS.**

23 (a) USE OF GENETIC INFORMATION.—It shall be an  
24 unlawful employment practice for any employer, labor or-  
25 ganization, or joint labor-management committee control-

1 ling apprenticeship or other training or retraining, includ-  
2 ing on-the-job training programs—

3 (1) to discriminate against any individual be-  
4 cause of genetic information with respect to the indi-  
5 vidual (or information about a request for or the re-  
6 ceipt of genetic services by such individual or a fam-  
7 ily member of such individual) in admission to, or  
8 employment in, any program established to provide  
9 apprenticeship or other training or retraining;

10 (2) to limit, segregate, or classify the applicants  
11 for or participants in such apprenticeship or other  
12 training or retraining, or fail or refuse to refer for  
13 employment any individual, in any way that would  
14 deprive or tend to deprive any individual of employ-  
15 ment opportunities, or otherwise adversely affect the  
16 status of the individual as an employee, because of  
17 genetic information with respect to the individual (or  
18 information about a request for or receipt of genetic  
19 services by such individual or family member of such  
20 individual); or

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

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

9 (1) where the employer, labor organization, or  
10 joint labor-management committee inadvertently re-  
11 quests or requires family medical history of the indi-  
12 vidual or family member of the individual;

13 (2) where—

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

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

21 (C) only the individual (or family member  
22 if the family member is receiving genetic serv-  
23 ices) and the licensed health care professional  
24 or board certified genetic counselor involved in  
25 providing such services receive individually iden-

1           tifiable information concerning the results of  
2           such services;

3                   (D) any individually identifiable genetic in-  
4           formation provided under subparagraph (C) in  
5           connection with the services provided under  
6           subparagraph (A) is only available for purposes  
7           of such services and shall not be disclosed to  
8           the employer, labor organization, or joint labor-  
9           management committee except in aggregate  
10          terms that do not disclose the identity of spe-  
11          cific individuals;

12                   (3) where the employer, labor organization, or  
13          joint labor-management committee requests or re-  
14          quires family medical history from the individual to  
15          comply with the certification provisions of section  
16          103 of the Family and Medical Leave Act of 1993  
17          (29 U.S.C. 2613) or such requirements under State  
18          family and medical leave laws;

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

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

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

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

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

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

14                   (D) the monitoring is in compliance with—

15                           (i) any Federal genetic monitoring  
16                           regulations, including any such regulations  
17                           that may be promulgated by the Secretary  
18                           of Labor pursuant to the Occupational  
19                           Safety and Health Act of 1970 (29 U.S.C.  
20                           651 et seq.), the Federal Mine Safety and  
21                           Health Act of 1977 (30 U.S.C. 801 et  
22                           seq.), or the Atomic Energy Act of 1954  
23                           (42 U.S.C. 2011 et seq.); or

24                           (ii) State genetic monitoring regula-  
25                           tions, in the case of a State that is imple-

1           menting genetic monitoring regulations  
2           under the authority of the Occupational  
3           Safety and Health Act of 1970 (29 U.S.C.  
4           651 et seq.); and

5           (E) the employer, labor organization, or  
6           joint labor-management committee, excluding  
7           any licensed health care professional or board  
8           certified genetic counselor that is involved in  
9           the genetic monitoring program, receives the re-  
10          sults of the monitoring only in aggregate terms  
11          that do not disclose the identity of specific indi-  
12          viduals;

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

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

20          (a) **TREATMENT OF INFORMATION AS PART OF CON-**  
21          **FIDENTIAL MEDICAL RECORD.**—If an employer, employ-  
22          ment agency, labor organization, or joint labor-manage-  
23          ment committee possesses genetic information about an  
24          employee or member (or information about a request for  
25          or receipt of genetic services by such employee or member

1 or family member of such employee or member), such in-  
2 formation shall be maintained on separate forms and in  
3 separate medical files and be treated as a confidential  
4 medical record of the employee or member.

5 (b) LIMITATION ON DISCLOSURE.—An employer, em-  
6 ployment agency, labor organization, or joint labor-man-  
7 agement committee shall not disclose genetic information  
8 concerning an employee or member (or information about  
9 a request for or receipt of genetic services by such em-  
10 ployee or member or family member of such employee or  
11 member) except—

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

16 (2) to an occupational or other health re-  
17 searcher if the research is conducted in compliance  
18 with the regulations and protections provided for  
19 under part 46 of title 45, Code of Federal Regula-  
20 tions;

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

23 (A) the employer, employment agency,  
24 labor organization, or joint labor-management

1 committee may disclose only the genetic infor-  
2 mation expressly authorized by such order; and

3 (B) if the court order was secured without  
4 the knowledge of the employee or member to  
5 whom the information refers, the employer, em-  
6 ployment agency, labor organization, or joint  
7 labor-management committee shall provide the  
8 employee or member with adequate notice to  
9 challenge the court order;

10 (4) to government officials who are inves-  
11 tigating compliance with this title if the information  
12 is relevant to the investigation; or

13 (5) to the extent that such disclosure is made  
14 in connection with the employee's compliance with  
15 the certification provisions of section 103 of the  
16 Family and Medical Leave Act of 1993 (29 U.S.C.  
17 2613) or such requirements under State family and  
18 medical leave laws.

19 **SEC. 207. REMEDIES AND ENFORCEMENT.**

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

22 (1) **IN GENERAL.—**The powers, remedies, and  
23 procedures provided in sections 705, 706, 707, 709,  
24 710, and 711 of the Civil Rights Act of 1964 (42  
25 U.S.C. 2000e–4 et seq.) to the Commission, the At-

1       torney General, or any person, alleging a violation of  
2       title VII of that Act (42 U.S.C. 2000e et seq.) shall  
3       be the powers, remedies, and procedures this title  
4       provides to the Commission, the Attorney General,  
5       or any person, respectively, alleging an unlawful em-  
6       ployment practice in violation of this title against an  
7       employee described in section 201(2)(A)(i), except as  
8       provided in paragraphs (2) and (3).

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

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

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

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

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

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

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

5 (c) EMPLOYEES COVERED BY CONGRESSIONAL AC-  
6 COUNTABILITY ACT OF 1995.—

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

19 (2) COSTS AND FEES.—The powers, remedies,  
20 and procedures provided in subsections (b) and (c)  
21 of section 722 of the Revised Statutes (42 U.S.C.  
22 1988), shall be powers, remedies, and procedures  
23 this title provides to that Board, or any person, al-  
24 leging 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 that Board, or any person, al-  
7           leging such a practice (not an employment practice  
8           specifically excluded from coverage under section  
9           1977A(a)(1) of the Revised Statutes).

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

17           (d) EMPLOYEES COVERED BY CHAPTER 5 OF TITLE  
18           3, UNITED STATES CODE.—

19           (1) IN GENERAL.—The powers, remedies, and  
20           procedures provided in chapter 5 of title 3, United  
21           States Code, to the President, the Commission, the  
22           Merit Systems Protection Board, or any person, al-  
23           leging a violation of section 411(a)(1) of that title,  
24           shall be the powers, remedies, and procedures this  
25           title provides to the President, the Commission, such

1 Board, or any person, respectively, alleging an un-  
2 lawful employment practice in violation of this title  
3 against an employee described in section  
4 201(2)(A)(iv), except as provided in paragraphs (2)  
5 and (3).

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

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

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

24 (1) IN GENERAL.—The powers, remedies, and  
25 procedures provided in section 717 of the Civil

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

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

19 (3) DAMAGES.—The powers, remedies, and pro-  
20 cedures provided in section 1977A of the Revised  
21 Statutes (42 U.S.C. 1981a), including the limita-  
22 tions contained in subsection (b)(3) of such section  
23 1977A, shall be powers, remedies, and procedures  
24 this title provides to the Commission, the Attorney  
25 General, the Librarian of Congress, or any person,

1       alleging such a practice (not an employment practice  
2       specifically excluded from coverage under section  
3       1977A(a)(1) of the Revised Statutes).

4       (f) DEFINITION.—In this section, the term “Commis-  
5       sion” means the Equal Employment Opportunity Commis-  
6       sion.

7       **SEC. 208. DISPARATE IMPACT.**

8       (a) GENERAL RULE.—Notwithstanding any other  
9       provision of this Act, “disparate impact”, as that term is  
10      used in section 703(k) of the Civil Rights Act of 1964  
11      (42 U.S.C. 2000e–2(k)), on the basis of genetic informa-  
12      tion does not establish a cause of action under this Act.

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

21      (c) MEMBERSHIP.—

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

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

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

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

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

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

12 (F) 1 member shall be appointed by the  
13 Minority Leader of the House of Representa-  
14 tives;

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

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

23 (2) COMPENSATION AND EXPENSES.—The  
24 members of the Commission shall not receive com-  
25 pensation for the performance of services for the

1 Commission, but shall be allowed travel expenses, in-  
2 cluding per diem in lieu of subsistence, at rates au-  
3 thorized for employees of agencies under subchapter  
4 I of chapter 57 of title 5, United States Code, while  
5 away from their homes or regular places of business  
6 in the performance of services for the Commission.

7 (d) ADMINISTRATIVE PROVISIONS.—

8 (1) LOCATION.—The Commission shall be lo-  
9 cated in a facility maintained by the Equal Employ-  
10 ment Opportunity Commission.

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

16 (3) INFORMATION FROM FEDERAL AGENCIES.—  
17 The Commission may secure directly from any Fed-  
18 eral department or agency such information as the  
19 Commission considers necessary to carry out the  
20 provisions of this section. Upon request of the Com-  
21 mission, the head of such department or agency  
22 shall furnish such information to the Commission.

23 (4) HEARINGS.—The Commission may hold  
24 such hearings, sit and act at such times and places,  
25 take such testimony, and receive such evidence as

1 the Commission considers advisable to carry out the  
2 objectives of this section, except that, to the extent  
3 possible, the Commission shall use existing data and  
4 research.

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

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

15 (f) **AUTHORIZATION OF APPROPRIATIONS.**—There  
16 are authorized to be appropriated to the Equal Employ-  
17 ment Opportunity Commission such sums as may be nec-  
18 essary to carry out this section.

19 **SEC. 209. CONSTRUCTION.**

20 Nothing in this title shall be construed to—

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

1 Act (42 U.S.C. 12112), or under the Rehabilitation  
2 Act of 1973 (29 U.S.C. 701 et seq.);

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

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

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

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

19 (5) limit or expand the protections, rights, or  
20 obligations of employees or employers under applica-  
21 ble workers' compensation laws;

22 (6) limit the authority of a Federal department  
23 or agency to conduct or sponsor occupational or  
24 other health research that is conducted in compli-  
25 ance with the regulations contained in part 46 of

1 title 45, Code of Federal Regulations (or any cor-  
2 responding or similar regulation or rule); and

3 (7) limit the statutory or regulatory authority  
4 of the Occupational Safety and Health Administra-  
5 tion or the Mine Safety and Health Administration  
6 to promulgate or enforce workplace safety and  
7 health laws and regulations.

8 **SEC. 210. MEDICAL INFORMATION THAT IS NOT GENETIC**  
9 **INFORMATION.**

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

18 **SEC. 211. REGULATIONS.**

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

22 **SEC. 212. AUTHORIZATION OF APPROPRIATIONS.**

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

1 **SEC. 213. EFFECTIVE DATE.**

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

4 **TITLE III—MISCELLANEOUS**  
5 **PROVISION**

6 **SEC. 301. SEVERABILITY.**

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