

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To provide for a complete substitute.

**IN THE SENATE OF THE UNITED STATES—108th Cong., 1st Sess.**

**S.** \_\_\_\_\_

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

Referred to the Committee on \_\_\_\_\_  
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by \_\_\_\_\_

Viz:

- 1 Strike all after the enacting clause and insert the fol-
- 2 lowing:
- 3 **SECTION 1. SHORT TITLE.**
- 4 This Act may be cited as the “Genetic Information
- 5 Nondiscrimination Act of 2003”.

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

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

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

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

17 (2) NO DISCRIMINATION IN GROUP PREMIUMS  
18 BASED ON GENETIC INFORMATION.—Section 702(b)  
19 of the Employee Retirement Income Security Act of  
20 1974 (29 U.S.C. 1182(b)) is amended—

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

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

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

12          (b) LIMITATIONS ON GENETIC TESTING.—Section  
13          702 of the Employee Retirement Income Security Act of  
14          1974 (29 U.S.C. 1182) is amended by adding at the end  
15          the following:

16          “(c) GENETIC TESTING.—

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

23                 “(2) RULE OF CONSTRUCTION.—Nothing in  
24                 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 group health plan or a health insurance  
9 issuer and who is providing health care services  
10 to an individual as part of a bona fide wellness  
11 program to notify such individual of the avail-  
12 ability of a genetic test or to provide informa-  
13 tion to such individual regarding such genetic  
14 test; or

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

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

22           “(c) REMEDIES AND ENFORCEMENT.—Section 502 of  
23 the Employee Retirement Income Security Act of 1974  
24 (29 U.S.C. 1132) is amended by adding at the end the  
25 following:

1           “(n) ENFORCEMENT OF GENETIC NONDISCRIMINA-  
2 TION REQUIREMENTS.—

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

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

20           “(A) REINSTATEMENT OF BENEFITS  
21 WHERE EQUITABLE RELIEF HAS BEEN AWARD-  
22 ED.—The recovery of benefits by a participant  
23 or beneficiary under a civil action under this  
24 section may include an administrative penalty  
25 under subparagraph (B) and the retroactive re-

1 instatement of coverage under the plan involved  
2 to the date on which the participant or bene-  
3 ficiary was denied eligibility for coverage if—

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

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

10 “(B) ADMINISTRATIVE PENALTY.—

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

20 “(ii) NONCOMPLIANCE PERIOD.—For  
21 purposes of clause (i), the term ‘non-  
22 compliance period’ means the period—

23 “(I) beginning on the date that a  
24 failure described in clause (i) occurs;  
25 and

1                   “(II) ending on the date that  
2                   such failure is corrected.

3                   “(iii) PAYMENT TO PARTICIPANT OR  
4                   BENEFICIARY.—A penalty collected under  
5                   this subparagraph shall be paid to the par-  
6                   ticipant or beneficiary involved.

7                   “(3) SECRETARIAL ENFORCEMENT AUTHOR-  
8                   ITY.—

9                   “(A) GENERAL RULE.—The Secretary has  
10                  the authority to impose a penalty on any failure  
11                  of a group health plan to meet the requirements  
12                  of subsection (a)(1)(F), (b)(3), or (c) of section  
13                  702.

14                  “(B) AMOUNT.—

15                  “(i) IN GENERAL.—The amount of  
16                  the penalty imposed by subparagraph (A)  
17                  shall be \$100 for each day in the non-  
18                  compliance period with respect to each in-  
19                  dividual to whom such failure relates.

20                  “(ii) NONCOMPLIANCE PERIOD.—For  
21                  purposes of this paragraph, the term ‘non-  
22                  compliance period’ means, with respect to  
23                  any failure, the period—

24                          “(I) beginning on the date such  
25                          failure first occurs; and

1                   “(II) ending on the date such  
2                   failure is corrected.

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

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

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

13                  “(II) which occurred or continued  
14                  during the period involved;  
15                  the amount of penalty imposed by subpara-  
16                  graph (A) by reason of such failures with  
17                  respect to such individual shall not be less  
18                  than \$2,500.

19                  “(ii) HIGHER MINIMUM PENALTY  
20                  WHERE VIOLATIONS ARE MORE THAN DE  
21                  MINIMIS.—To the extent violations for  
22                  which any person is liable under this para-  
23                  graph for any year are more than de mini-  
24                  mis, clause (i) shall be applied by sub-



1                   stituting ‘\$15,000’ for ‘\$2,500’ with re-  
2                   spect to such person.

3                   “(D) LIMITATIONS.—

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

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

18                         “(I) such failure was due to rea-  
19                         sonable cause and not to willful ne-  
20                         glect; and

21                         “(II) such failure is corrected  
22                         during the 30-day period beginning on  
23                         the first date the person otherwise lia-  
24                         ble for such penalty knew, or exer-

1 cising reasonable diligence would have  
2 known, that such failure existed.

3 “(iii) OVERALL LIMITATION FOR UN-  
4 INTENTIONAL FAILURES.—In the case of  
5 failures which are due to reasonable cause  
6 and not to willful neglect, the penalty im-  
7 posed by subparagraph (A) for failures  
8 shall not exceed the amount equal to the  
9 lesser of—

10 “(I) 10 percent of the aggregate  
11 amount paid or incurred by the em-  
12 ployer (or predecessor employer) dur-  
13 ing the preceding taxable year for  
14 group health plans; or

15 “(II) \$500,000.

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

23 (d) DEFINITIONS.—Section 733(d) of the Employee  
24 Retirement Income Security Act of 1974 (29 U.S.C.  
25 1191b(d)) is amended by adding at the end the following:

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

3           “(A) the spouse of the individual;

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

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

10          “(6) GENETIC INFORMATION.—

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

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

15           “(ii) the genetic tests of family mem-  
16 bers of the individual; or

17           “(iii) the occurrence of a disease or  
18 disorder in family members of the indi-  
19 vidual.

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

23          “(7) GENETIC TEST.—

24          “(A) IN GENERAL.—The term ‘genetic  
25 test’ means an analysis of human DNA, RNA,

1 chromosomes, proteins, or metabolites, that de-  
2 tects genotypes, mutations, or chromosomal  
3 changes.

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

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

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

16 “(8) GENETIC SERVICES.—The term ‘genetic  
17 services’ means—

18 “(A) a genetic test;

19 “(B) genetic counseling (such as obtaining,  
20 interpreting, or assessing genetic information);  
21 or

22 “(C) genetic education.”

23 (e) REGULATIONS AND EFFECTIVE DATE.—

24 (1) REGULATIONS.—Not later than 1 year after  
25 the date of enactment of this title, the Secretary of

1 Labor shall issue final regulations in an accessible  
2 format to carry out the amendments made by this  
3 section.

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

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

10 **ACT.**

11 (a) AMENDMENTS RELATING TO THE GROUP MAR-  
12 KET.—

13 (1) PROHIBITION OF HEALTH DISCRIMINATION  
14 ON THE BASIS OF GENETIC INFORMATION OR GE-  
15 NETIC SERVICES.—

16 (A) NO ENROLLMENT RESTRICTION FOR  
17 GENETIC SERVICES.—Section 2702(a)(1)(F) of  
18 the Public Health Service Act (42 U.S.C.  
19 300gg-1(a)(1)(F)) is amended by inserting be-  
20 fore the period the following: “(including infor-  
21 mation about a request for or receipt of genetic  
22 services by an individual or family member of  
23 such individual)”.

24 (B) NO DISCRIMINATION IN GROUP PRE-  
25 MIUMS BASED ON GENETIC INFORMATION.—

1 Section 2702(b) of the Public Health Service  
2 Act (42 U.S.C. 300gg-1(b)) is amended—

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

6 (ii) by adding at the end the fol-  
7 lowing:

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

19 (2) LIMITATIONS ON GENETIC TESTING.—Sec-  
20 tion 2702 of the Public Health Service Act (42  
21 U.S.C. 300gg-1) is amended by adding at the end  
22 the following:

23 “(c) GENETIC TESTING.—

24 “(1) LIMITATION ON REQUESTING OR REQUIR-  
25 ING GENETIC TESTING.—A group health plan, or a

1 health insurance issuer offering health insurance  
2 coverage in connection with a group health plan,  
3 shall not request or require an individual or a family  
4 member of such individual to undergo a genetic test.

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

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

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

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

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

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

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

7 “(3) ENFORCEMENT AUTHORITY RELATING TO  
8 GENETIC DISCRIMINATION.—

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

18 “(B) AMOUNT.—

19 “(i) IN GENERAL.—The amount of  
20 the penalty imposed under this paragraph  
21 shall be \$100 for each day in the non-  
22 compliance period with respect to each in-  
23 dividual to whom such failure relates.

24 “(ii) NONCOMPLIANCE PERIOD.—For  
25 purposes of this paragraph, the term ‘non-



1 compliance period' means, with respect to  
2 any failure, the period—

3 “(I) beginning on the date such  
4 failure first occurs; and

5 “(II) ending on the date such  
6 failure is corrected.

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

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

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

17 “(II) which occurred or continued  
18 during the period involved;

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

23 “(ii) HIGHER MINIMUM PENALTY  
24 WHERE VIOLATIONS ARE MORE THAN DE  
25 MINIMIS.—To the extent violations for

1 which any person is liable under this para-  
2 graph for any year are more than de mini-  
3 mis, clause (i) shall be applied by sub-  
4 stituting ‘\$15,000’ for ‘\$2,500’ with re-  
5 spect to such person.

6 “(D) LIMITATIONS.—

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

17 “(ii) PENALTY NOT TO APPLY TO FAIL-  
18 URES CORRECTED WITHIN CERTAIN PERI-  
19 ODS.—No penalty shall be imposed by sub-  
20 paragraph (A) on any failure if—

21 “(I) such failure was due to rea-  
22 sonable cause and not to willful ne-  
23 glect; and

24 “(II) such failure is corrected  
25 during the 30-day period beginning on

1 the first date the person otherwise lia-  
2 ble for such penalty knew, or exer-  
3 cising reasonable diligence would have  
4 known, that such failure existed.

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

12 “(I) 10 percent of the aggregate  
13 amount paid or incurred by the em-  
14 ployer (or predecessor employer) dur-  
15 ing the preceding taxable year for  
16 group health plans; or

17 “(II) \$500,000.

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

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

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

6           “(A) the spouse of the individual;

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

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

13          “(16) GENETIC INFORMATION.—

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

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

18           “(ii) the genetic tests of family mem-  
19       bers of the individual; or

20           “(iii) the occurrence of a disease or  
21       disorder in family members of the indi-  
22       vidual.

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

1 “(17) GENETIC TEST.—

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

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

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

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

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

21 “(A) a genetic test;

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

25 “(C) genetic education.”.

1 (b) AMENDMENT RELATING TO THE INDIVIDUAL  
2 MARKET.—

3 (1) IN GENERAL.—The first subpart 3 of part  
4 B of title XXVII of the Public Health Service Act  
5 (42 U.S.C. 300gg–51 et seq.) (relating to other re-  
6 quirements) is amended—

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

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

10 **“SEC. 2753. PROHIBITION OF HEALTH DISCRIMINATION ON**  
11 **THE BASIS OF GENETIC INFORMATION.**

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

21 “(b) PROHIBITION ON GENETIC INFORMATION IN  
22 SETTING PREMIUM RATES.—A health insurance issuer of-  
23 fering health insurance coverage in the individual market  
24 shall not adjust premium or contribution amounts for an  
25 individual on the basis of genetic information concerning

1 the individual or a family member of the individual (in-  
2 cluding information about a request for or receipt of ge-  
3 netic services by an individual or family member of such  
4 individual).

5 “(c) GENETIC TESTING.—

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

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

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

19 “(B) limit the authority of a health care  
20 professional who is employed by or affiliated  
21 with a health insurance issuer and who is pro-  
22 viding health care services to an individual as  
23 part of a bona fide wellness program to notify  
24 such individual of the availability of a genetic

1 test or to provide information to such individual  
2 regarding such genetic test; or

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

6 (2) REMEDIES AND ENFORCEMENT.—Section  
7 2761(b) of the Public Health Service Act (42 U.S.C.  
8 300gg-61)(b)) is amended to read as follows:

9 “(b) SECRETARIAL ENFORCEMENT AUTHORITY.—  
10 The Secretary shall have the same authority in relation  
11 to enforcement of the provisions of this part with respect  
12 to issuers of health insurance coverage in the individual  
13 market in a State as the Secretary has under section  
14 2722(b)(2), and section 2722(b)(3) with respect to viola-  
15 tions of genetic nondiscrimination provisions, in relation  
16 to the enforcement of the provisions of part A with respect  
17 to issuers of health insurance coverage in the small group  
18 market in the State.”.

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



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

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

5                   “(D) ELECTION NOT APPLICABLE TO RE-  
6 QUIREMENTS CONCERNING GENETIC INFORMA-  
7 TION.—The election described in subparagraph  
8 (A) shall not be available with respect to the  
9 provisions of subsections (a)(1)(F) and (c) of  
10 section 2702 and the provisions of section  
11 2702(b) to the extent that such provisions  
12 apply to genetic information (or information  
13 about a request for or the receipt of genetic  
14 services by an individual or a family member of  
15 such individual).”.

16       (d) REGULATIONS AND EFFECTIVE DATE.—

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

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

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

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

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

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

16 (1) NO ENROLLMENT RESTRICTION FOR GE-  
17 NETIC SERVICES.—Section 9802(a)(1)(F) of the In-  
18 ternal Revenue Code of 1986 is amended by insert-  
19 ing before the period the following: “(including in-  
20 formation about a request for or receipt of genetic  
21 services by an individual or family member of such  
22 individual)”.

23 (2) NO DISCRIMINATION IN GROUP PREMIUMS  
24 BASED ON GENETIC INFORMATION.—Section

1 9802(b) of the Internal Revenue Code of 1986 is  
2 amended—

3 (A) in paragraph (2)(A), by inserting be-  
4 fore the semicolon the following: “, except as  
5 provided in paragraph (3)”;

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

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

16 (b) LIMITATIONS ON GENETIC TESTING.—Section  
17 9802 of the Internal Revenue Code of 1986 is amended  
18 by adding at the end the following:

19 “(d) GENETIC TESTING AND GENETIC SERVICES.—

20 “(1) LIMITATION ON REQUESTING OR REQUIR-  
21 ING GENETIC TESTING.—A group health plan shall  
22 not request or require an individual or a family  
23 member of such individual to undergo a genetic 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 group health plan and who is providing  
9 health care services to an individual as part of  
10 a bona fide wellness program to notify such in-  
11 dividual of the availability of a genetic test or  
12 to provide information to such individual re-  
13 garding 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           “(e) APPLICATION TO ALL PLANS.—The provisions  
18 of subsections (a)(1)(F), (b)(3), and (d) shall apply to  
19 group health plans and health insurance issuers without  
20 regard to section 9831(a)(2).”.

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

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

1                   “(A) the spouse of the individual;

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

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

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

10                   “(A) a genetic test;

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

14                   “(C) genetic education.

15                   “(8) GENETIC INFORMATION.—

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

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

20                   “(ii) the genetic tests of family mem-  
21 bers of the individual; or

22                   “(iii) the occurrence of a disease or  
23 disorder in family members of the indi-  
24 vidual.

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

4           “(9) GENETIC TEST.—

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

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

12                 “(i) an analysis of proteins or metabo-  
13                 lites that does not detect genotypes,  
14                 mutations, or chromosomal changes; or

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

22          (d) REGULATIONS AND EFFECTIVE DATE.—

23                 (1) REGULATIONS.—Not later than 1 year after  
24                 the date of enactment of this title, the Secretary of  
25                 the Treasury shall issue final regulations in an ac-



1 information' shall have the meanings given such  
2 terms in subsection (v).”.

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

7 (b) LIMITATIONS ON GENETIC TESTING.—

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

11 “(v) LIMITATIONS ON GENETIC TESTING.—

12 “(1) GENETIC TESTING.—

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

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

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



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

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

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

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

16           “(i) the spouse of the individual;

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

20           “(iii) any other individuals related by  
21 blood to the individual or to the spouse or  
22 child described in clause (i) or (ii).

23           “(B) GENETIC INFORMATION.—

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

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

5                               “(II) the genetic tests of family  
6                   members of the individual; or

7                               “(III) the occurrence of a disease  
8                   or disorder in family members of the  
9                   individual.

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

13                   “(C) GENETIC TEST.—

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

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

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

1                   “(II) an analysis of proteins or  
2                   metabolites that is directly related to  
3                   a manifested disease, disorder, or  
4                   pathological condition that could rea-  
5                   sonably be detected by a health care  
6                   professional with appropriate training  
7                   and expertise in the field of medicine  
8                   involved.

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

11                   “(i) a genetic test;

12                   “(ii) genetic counseling (such as ob-  
13                  taining, interpreting, or assessing genetic  
14                  information); or

15                   “(iii) genetic education.

16                   “(E) ISSUER OF A MEDICARE SUPPLE-  
17                  MENTAL POLICY.—The term ‘issuer of a medi-  
18                  care supplemental policy’ includes a third-party  
19                  administrator or other person acting for or on  
20                  behalf of such issuer.”.

21                  (2) CONFORMING AMENDMENT.—Section  
22                  1882(o) of the Social Security Act (42 U.S.C.  
23                  1395ss(o)) is amended by adding at the end the fol-  
24                  lowing:

1           “(4) The issuer of the medicare supplemental  
2 policy complies with subsection (s)(2)(E) and sub-  
3 section (v).”.

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

9           (c) TRANSITION PROVISIONS.—

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

19           (2) NAIC STANDARDS.—If, not later than June  
20 30, 2004, the National Association of Insurance  
21 Commissioners (in this subsection referred to as the  
22 “NAIC”) modifies its NAIC Model Regulation relat-  
23 ing to section 1882 of the Social Security Act (re-  
24 ferred to in such section as the 1991 NAIC Model  
25 Regulation, as subsequently modified) to conform to

1 the amendments made by this section, such revised  
2 regulation incorporating the modifications shall be  
3 considered to be the applicable NAIC model regula-  
4 tion (including the revised NAIC model regulation  
5 and the 1991 NAIC Model Regulation) for the pur-  
6 poses of such section.

7 (3) SECRETARY STANDARDS.—If the NAIC  
8 does not make the modifications described in para-  
9 graph (2) within the period specified in such para-  
10 graph, the Secretary of Health and Human Services  
11 shall, not later than October 1, 2004, make the  
12 modifications described in such paragraph and such  
13 revised regulation incorporating the modifications  
14 shall be considered to be the appropriate regulation  
15 for the purposes of such section.

16 (4) DATE SPECIFIED.—

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

20 (i) the date the State changes its stat-  
21 utes or regulations to conform its regu-  
22 latory program to the changes made by  
23 this section, or

24 (ii) October 1, 2004.

1 (B) ADDITIONAL LEGISLATIVE ACTION RE-  
2 QUIRED.—In the case of a State which the Sec-  
3 retary identifies as—

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

8 (ii) having a legislature which is not  
9 scheduled to meet in 2004 in a legislative  
10 session in which such legislation may be  
11 considered,

12 the date specified in this paragraph is the first  
13 day of the first calendar quarter beginning after  
14 the close of the first legislative session of the  
15 State legislature that begins on or after July 1,  
16 2004. For purposes of the previous sentence, in  
17 the case of a State that has a 2-year legislative  
18 session, each year of such session shall be  
19 deemed to be a separate regular session of the  
20 State legislature.

21 **SEC. 105. PRIVACY AND CONFIDENTIALITY.**

22 (a) APPLICABILITY.—Except as provided in sub-  
23 section (d), the provisions of this section shall apply to  
24 group health plans, health insurance issuers (including  
25 issuers in connection with group health plans or individual

1 health coverage), and issuers of medicare supplemental  
2 policies, without regard to—

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

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

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

9 (b) COMPLIANCE WITH CERTAIN CONFIDENTIALITY  
10 STANDARDS WITH RESPECT TO GENETIC INFORMA-  
11 TION.—

12 (1) IN GENERAL.—The regulations promulgated  
13 by the Secretary of Health and Human Services  
14 under part C of title XI of the Social Security Act  
15 (42 U.S.C. 1320d et seq.) and section 264 of the  
16 Health Insurance Portability and Accountability Act  
17 of 1996 (42 U.S.C. 1320d-2 note) shall apply to the  
18 use or disclosure of genetic information.

19 (2) PROHIBITION ON UNDERWRITING AND PRE-  
20 MIUM RATING.—Notwithstanding paragraph (1), a  
21 group health plan, a health insurance issuer, or  
22 issuer of a medicare supplemental policy shall not  
23 use or disclose genetic information (including infor-  
24 mation about a request for or a receipt of genetic  
25 services by an individual or family member of such

1 individual) for purposes of underwriting, determina-  
2 tions of eligibility to enroll, premium rating, or the  
3 creation, renewal or replacement of a plan, contract  
4 or coverage for health insurance or health benefits.

5 (c) PROHIBITION ON COLLECTION OF GENETIC IN-  
6 FORMATION.—

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

17 (2) LIMITATION RELATING TO THE COLLEC-  
18 TION OF GENETIC INFORMATION PRIOR TO ENROLL-  
19 MENT.—A group health plan, health insurance  
20 issuer, or issuer of a medicare supplemental policy  
21 shall not request, require, or purchase genetic infor-  
22 mation (including information about a request for or  
23 a receipt of genetic services by an individual or fam-  
24 ily member of such individual) concerning a partici-  
25 pant, beneficiary, or enrollee prior to the enrollment,



1 and in connection with such enrollment, of such indi-  
2 vidual under the plan, coverage, or policy.

3 (3) INCIDENTAL COLLECTION.—Where a group  
4 health plan, health insurance issuer, or issuer of a  
5 medicare supplemental policy obtains genetic infor-  
6 mation incidental to the requesting, requiring, or  
7 purchasing of other information concerning a partic-  
8 ipant, beneficiary, or enrollee, such request, require-  
9 ment, or purchase shall not be considered a violation  
10 of this subsection if—

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

13 (B) any genetic information (including in-  
14 formation about a request for or receipt of ge-  
15 netic services) requested, required, or purchased  
16 is not used or disclosed in violation of sub-  
17 section (b).

18 (d) APPLICATION OF CONFIDENTIALITY STAND-  
19 ARDS.—The provisions of subsections (b) and (c) shall not  
20 apply—

21 (1) to group health plans, health insurance  
22 issuers, or issuers of medicare supplemental policies  
23 that are not otherwise covered under the regulations  
24 promulgated by the Secretary of Health and Human  
25 Services under part C of title XI of the Social Secu-

1 rity Act (42 U.S.C. 1320d et seq.) and section 264  
2 of the Health Insurance Portability and Account-  
3 ability Act of 1996 (42 U.S.C. 1320d-2 note); and  
4 (2) to genetic information that is not considered  
5 to be individually-identifiable health information  
6 under the regulations promulgated by the Secretary  
7 of Health and Human Services under part C of title  
8 XI of the Social Security Act (42 U.S.C. 1320d et  
9 seq.) and section 264 of the Health Insurance Port-  
10 ability and Accountability Act of 1996 (42 U.S.C.  
11 1320d-2 note).

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

20 (f) PREEMPTION.—

21 (1) IN GENERAL.—A provision or requirement  
22 under this section or a regulation promulgated under  
23 this section shall supersede any contrary provision of  
24 State law unless such provision of State law imposes  
25 requirements, standards, or implementation speci-

1       fications that are more stringent than the require-  
2       ments, standards, or implementation specifications  
3       imposed under this section or such regulations. No  
4       penalty, remedy, or cause of action to enforce such  
5       a State law that is more stringent shall be pre-  
6       empted by this section.

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

12      (g) COORDINATION WITH PRIVACY REGULATIONS.—  
13      The Secretary shall implement and administer this section  
14      in a manner that is consistent with the implementation  
15      and administration by the Secretary of the regulations  
16      promulgated by the Secretary of Health and Human Serv-  
17      ices under part C of title XI of the Social Security Act  
18      (42 U.S.C. 1320d et seq.) and section 264 of the Health  
19      Insurance Portability and Accountability Act of 1996 (42  
20      U.S.C. 1320d-2 note).

21      (h) DEFINITIONS.—In this section:

22           (1) GENETIC INFORMATION; GENETIC SERV-  
23      ICES.—The terms “family member”, “genetic infor-  
24      mation”, “genetic services”, and “genetic test” have  
25      the meanings given such terms in section 2791 of

1 the Public Health Service Act (42 U.S.C. 300gg-91),  
2 as amended by this Act.

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

8 (3) ISSUER OF A MEDICARE SUPPLEMENTAL  
9 POLICY.—The term “issuer of a medicare supple-  
10 mental policy” means an issuer described in section  
11 1882 of the Social Security Act (42 insert 1395ss).

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

14 **SEC. 106. ASSURING COORDINATION.**

15 (a) IN GENERAL.—Except as provided in subsection  
16 (b), the Secretary of the Treasury, the Secretary of Health  
17 and Human Services, and the Secretary of Labor shall en-  
18 sure, through the execution of an interagency memo-  
19 randum of understanding among such Secretaries, that—

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

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

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

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

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

15          (b) **EFFECTIVE DATE.**—Except as provided in sec-  
16          tion 104, the amendments made by this title shall take  
17          effect on the date that is 18 months after the date of en-  
18          actment of this Act.

19           **TITLE II—PROHIBITING EM-**  
20           **PLOYMENT DISCRIMINATION**  
21           **ON THE BASIS OF GENETIC**  
22           **INFORMATION**

23           **SEC. 201. DEFINITIONS.**

24           In this title:

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

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

7           (A) IN GENERAL.—The term “employee”  
8 means—

9                   (i) an employee (including an appli-  
10 cant), as defined in section 701(f) of the  
11 Civil Rights Act of 1964 (42 U.S.C.  
12 2000e(f));

13                   (ii) a Presidential appointee or State  
14 employee (including an applicant) to which  
15 section 302(a)(1) of the Government Em-  
16 ployee Rights Act of 1991 (2 U.S.C.  
17 1202(a)(1)) applies;

18                   (iii) a covered employee (including an  
19 applicant), as defined in section 101 of the  
20 Congressional Accountability Act of 1995  
21 (2 U.S.C. 1301);

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

1 (v) an employee or applicant to which  
2 section 717(a) of the Civil Rights Act of  
3 1964 (42 U.S.C. 2000e-16(a)) applies.

4 (B) EMPLOYER.—The term “employer”  
5 means—

6 (i) an employer (as defined in section  
7 701(b) of the Civil Rights Act of 1964 (42  
8 U.S.C. 2000e(b));

9 (ii) an employing authority to which  
10 section 302(a)(1) of the Government Em-  
11 ployee Rights Act of 1991 applies;

12 (iii) an employing office, as defined in  
13 section 101 of the Congressional Account-  
14 ability Act of 1995

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

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

20 (C) EMPLOYMENT AGENCY; LABOR ORGA-  
21 NIZATION.—The terms “employment agency”  
22 and “labor organization” have the meanings  
23 given the terms in section 701 of the Civil  
24 Rights Act of 1964 (42 U.S.C. 2000e).

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

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

6 (A) the spouse of the individual;

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

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

13 (4) GENETIC INFORMATION.—

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

17 (i) an individual’s genetic tests;

18 (ii) the genetic tests of family mem-  
19 bers of the individual; or

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

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



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

11          (6) GENETIC SERVICES.—The term “genetic  
12          services” means—

13                 (A) a genetic test;

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

16                 or

17                 (C) genetic education.

18          (7) GENETIC TEST.—

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

24                 (B) EXCEPTION.—The term “genetic test”  
25                 does not mean an analysis of proteins or me-

1           tabolites that does not detect genotypes,  
2           mutations, or chromosomal changes.

3 **SEC. 202. EMPLOYER PRACTICES.**

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

6           (1) to fail or refuse to hire or to discharge any  
7 employee, or otherwise to discriminate against any  
8 employee with respect to the compensation, terms,  
9 conditions, or privileges of employment of the em-  
10 ployee, because of genetic information with respect  
11 to the employee (or information about a request for  
12 or the receipt of genetic services by such employee  
13 or family member of such employee); or

14           (2) to limit, segregate, or classify the employees  
15 of the employer in any way that would deprive or  
16 tend to deprive any employee of employment oppor-  
17 tunities or otherwise adversely affect the status of  
18 the employee as an employee, because of genetic in-  
19 formation with respect to the employee (or informa-  
20 tion about a request for or the receipt of genetic  
21 services by such employee or family member of such  
22 employee).

23           (b) ACQUISITION OF GENETIC INFORMATION.—It  
24 shall be an unlawful employment practice for an employer  
25 to request, require, or purchase genetic information with

1 respect to an employee or a family member of the em-  
2 ployee (or information about a request for the receipt of  
3 genetic services by such employee or a family member of  
4 such employee) except—

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

8 (2) where—

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

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

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

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

1 the employer except in aggregate terms that do  
2 not disclose the identity of specific employees;

3 (3) where an employer requests or requires  
4 family medical history from the employee to comply  
5 with the certification provisions of section 103 of the  
6 Family and Medical Leave Act of 1993 (29 U.S.C.  
7 2613) or such requirements under State family and  
8 medical leave laws;

9 (4) where an employer purchases documents  
10 that are commercially and publicly available (includ-  
11 ing newspapers, magazines, periodicals, and books,  
12 but not including medical databases or court  
13 records) that include family medical history; or

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

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

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

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

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

25 (D) the monitoring is in compliance with—

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

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

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

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

1 or treated or disclosed in a manner that violates section  
2 206.

3 **SEC. 203. EMPLOYMENT AGENCY PRACTICES.**

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

7 (1) to fail or refuse to refer for employment, or  
8 otherwise to discriminate against, any individual be-  
9 cause of genetic information with respect to the indi-  
10 vidual (or information about a request for or the re-  
11 ceipt of genetic services by such individual or family  
12 member of such individual);

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

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

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

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

11 (2) where—

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

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

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

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

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

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

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

23 (A) the employment agency provides writ-  
24 ten notice of the genetic monitoring to the indi-  
25 vidual;



1 (B)(i) the individual 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 individual 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 employment agency, excluding any  
24 licensed health care professional or board cer-  
25 tified genetic counselor that is involved in the

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

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

11 **SEC. 204. LABOR ORGANIZATION PRACTICES.**

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

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

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

1 netic information with respect to the member (or in-  
2 formation about a request for or the receipt of ge-  
3 netic services by such member or family member of  
4 such member); or

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

8 (b) ACQUISITION OF GENETIC INFORMATION.—It  
9 shall be an unlawful employment practice for a labor orga-  
10 nization to request, require, or purchase genetic informa-  
11 tion with respect to a member or a family member of the  
12 member (or information about a request for the receipt  
13 of genetic services by such member or a family member  
14 of such member) except—

15 (1) where a labor organization inadvertently re-  
16 quests or requires family medical history of the  
17 member or family member of the member;

18 (2) where—

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

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

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

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

16 (3) where a labor organization requests or re-  
17 quires family medical history from the members to  
18 comply with the certification provisions of section  
19 103 of the Family and Medical Leave Act of 1993  
20 (29 U.S.C. 2613) or such requirements under State  
21 family and medical leave laws;

22 (4) where a labor organization purchases docu-  
23 ments that are commercially and publicly available  
24 (including newspapers, magazines, periodicals, and

1 books, but not including medical databases or court  
2 records) that include family medical history; or

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

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

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

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

12 (C) the member 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 labor organization, excluding any  
6           licensed health care professional or board cer-  
7           tified genetic counselor that is involved in the  
8           genetic monitoring program, receives the results  
9           of the monitoring only in aggregate terms that  
10          do not disclose the identity of specific members;

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

17          **SEC. 205. TRAINING PROGRAMS.**

18          (a) USE OF GENETIC INFORMATION.—It shall be an  
19          unlawful employment practice for any employer, labor or-  
20          ganization, or joint labor-management committee control-  
21          ling apprenticeship or other training or retraining, includ-  
22          ing on-the-job training programs—

23                  (1) to discriminate against any individual be-  
24                  cause of genetic information with respect to the indi-  
25                  vidual (or information about a request for or the re-

1 receipt of genetic services by such individual or a fam-  
2 ily member of such individual) in admission to, or  
3 employment in, any program established to provide  
4 apprenticeship or other training or retraining;

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

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

20 (b) ACQUISITION OF GENETIC INFORMATION.—It  
21 shall be an unlawful employment practice for an employer,  
22 labor organization, or joint labor-management committee  
23 described in subsection (a) to request, require, or purchase  
24 genetic information with respect to an individual or a fam-  
25 ily member of the individual (or information about a re-

1 quest for the receipt of genetic services by such individual  
2 or a family member of such individual) except—

3 (1) where the employer, labor organization, or  
4 joint labor-management committee inadvertently re-  
5 quests or requires family medical history of the indi-  
6 vidual or family member of the individual;

7 (2) where—

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

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

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

22 (D) any individually identifiable genetic in-  
23 formation provided under subparagraph (C) in  
24 connection with the services provided under  
25 subparagraph (A) is only available for purposes



1 of such services and shall not be disclosed to  
2 the employer, labor organization, or joint labor-  
3 management committee except in aggregate  
4 terms that do not disclose the identity of spe-  
5 cific individuals;

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

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

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

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

1 (B)(i) the individual 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 individual 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, labor organization, or  
24 joint labor-management committee, excluding  
25 any licensed health care professional or board

1 certified genetic counselor that is involved in  
2 the genetic monitoring program, receives the re-  
3 sults of the monitoring only in aggregate terms  
4 that do not disclose the identity of specific indi-  
5 viduals;

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

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

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

23 (b) LIMITATION ON DISCLOSURE.—An employer, em-  
24 ployment agency, labor organization, or joint labor-man-  
25 agement committee shall not disclose genetic information

1 concerning an employee or member (or information about  
2 a request for or receipt of genetic services by such em-  
3 ployee or member or family member of such employee or  
4 member) except—

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

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

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

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

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

1 employee or member with adequate notice to  
2 challenge the court order;

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

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

12 **SEC. 207. REMEDIES AND ENFORCEMENT.**

13 (a) ENFORCEMENT POWERS.—With respect to the  
14 administration and enforcement of this title in the case  
15 of a claim alleged by an individual for a violation of this  
16 title—

17 (1) the Equal Employment Opportunity Com-  
18 mission shall have the same powers as the Commis-  
19 sion has to administer and enforce—

20 (A) sections 705, 706, 707, 709, 710, and  
21 711, and section 717, of the Civil Rights Act of  
22 1964 (42 U.S.C. 2000e–4 et seq. or section  
23 2000e–16); or

1 (B) sections 302, 303, and 304 of the Gov-  
2 ernment Employee Rights Act of 1991 (2  
3 U.S.C. 1202, 1219, and 1220);

4 in the case of a claim alleged by such individual for  
5 a violation of title VII or section 717 of the Civil  
6 Rights Act of 1964, or of section 302(a)(1) of the  
7 Government Employee Rights Act of 1991 (2 U.S.C.  
8 1202(a)(1)), respectively;

9 (2) the Librarian of Congress shall have the  
10 same powers as the Librarian of Congress has to ad-  
11 minister and enforce section 717 of the Civil Rights  
12 Act of 1964 (42 U.S.C. 2000e-16) in the case of a  
13 claim alleged by such individual for a violation of  
14 such section;

15 (3) the Board (as defined in section 101 of the  
16 Congressional Accountability Act of 1995 (2 U.S.C.  
17 1301)) shall have the same powers as the Board has  
18 to administer and enforce the Congressional Ac-  
19 countability Act of 1995 (2 U.S.C. 1301 et seq.) in  
20 the case of a claim alleged by such individual for a  
21 violation of section 201(a)(1) of such Act (2 U.S.C.  
22 1311(a)(1));

23 (4) the Attorney General (or such other entity  
24 as is designated by the President by Executive  
25 Order, as appropriate) shall have the same powers

1 as the Attorney General (or entity) has to admin-  
2 ister and enforce—

3 (A) sections 705, 706, 707, 709, 710, and  
4 711, and section 717, of the Civil Rights Act of  
5 1964 (42 U.S.C. 2000e-4 et seq. or section  
6 2000e-16); or

7 (B) sections 302, 303, and 304 of the Gov-  
8 ernment Employee Rights Act of 1991 (2  
9 U.S.C. 1202, 1219, and 1220);

10 in the case of a claim alleged by such individual for  
11 a violation of title VII or section 717 of the Civil  
12 Rights Act of 1964, or of section 302(a)(1) of the  
13 Government Employee Rights Act of 1991 (2 U.S.C.  
14 1202(a)(1)), respectively;

15 (5) the President, the Equal Employment Op-  
16 portunity Commission, and the Merit Systems Pro-  
17 tection Board shall have the same powers as the  
18 President, the Commission, and the Board, respec-  
19 tively, have to administer and enforce chapter 5 of  
20 title 3, United States Code, in the case of a claim  
21 alleged by such individual for a violation of section  
22 411 of such title; and

23 (6) the individual shall have the same powers as  
24 the individual has to enforce sections 705, 706, 707,  
25 709, 710, and 711 of the Civil Rights Act of 1964

1 (42 U.S.C. 2000e–4 et seq), in the case of a claim  
2 alleged by such individual for a violation of title VII  
3 of the Civil Rights Act of 1964 (42 U.S.C. 2000e et  
4 seq.).

5 (b) PROCEDURES AND REMEDIES.—The procedures  
6 and remedies applicable to a claim alleged by an individual  
7 for a violation of this title are—

8 (1) the procedures and remedies applicable  
9 under sections 705, 706, 707, 709, 710, and 711,  
10 and section 717 of the Civil Rights Act of 1964 (42  
11 U.S.C. 2000e–4 et seq. or 2000e–16) for a violation  
12 of title VII or section 717 of the Civil Rights Act of  
13 1964 (42 U.S.C. 2000 et seq.), respectively, in the  
14 case of a claim alleged by such individual for a viola-  
15 tion of such title or such section, respectively;

16 (2) the procedures and remedies applicable for  
17 a violation of section 302(a)(1) of the Government  
18 Employee Rights Act of 1991 (2 U.S.C. 1202(a)(1))  
19 in the case of a claim alleged by such individual for  
20 a violation of such section;

21 (3) the procedures and remedies applicable for  
22 a violation of section 201(a)(1) of the Congressional  
23 Accountability Act of 1995 (2 U.S.C. 1311(a)(1)) in  
24 the case of a claim alleged by such individual for a  
25 violation of such section; and



1           (4) the procedures and remedies applicable for  
2           a violation of section 411 of title 3, United States  
3           Code, in the case of a claim alleged by such indi-  
4           vidual for a violation of such section.

5           (c) OTHER APPLICABLE PROVISIONS.—With respect  
6           to a claim alleged by a covered employee (as defined in  
7           section 101 of the Congressional Accountability Act of  
8           1995 (2 U.S.C. 1301)) for a violation of this title, title  
9           III of the Congressional Accountability Act of 1995 (2  
10          U.S.C. 1381 et seq.) shall apply in the same manner as  
11          such title applies with respect to a claim alleged by such  
12          a covered employee for a violation of section 201(a)(1) of  
13          such Act (2 U.S.C. 1311(a)(1)).

14          (d) COSTS AND FEES.—The powers, remedies, and  
15          procedures set forth in subsections (b) and (c) of section  
16          722 of the Revised Statutes (42 U.S.C. 1988) shall be  
17          the powers, remedies, and procedures provided—

18                 (1) in the case of an employee described in sec-  
19                 tion 201(2)(A)(i), to the Equal Employment Oppor-  
20                 tunity Commission, the Attorney General, or any  
21                 person;

22                 (2) in the case of an employee described in sec-  
23                 tion 201(2)(A)(ii), to the Equal Employment Oppor-  
24                 tunity Commission, the Attorney General, or such

1 other entity as is designated by the President by Ex-  
2 ecutive Order;

3 (3) in the case of an employee described in sec-  
4 tion 201(2)(A)(iii), to the Board of Directors of the  
5 Office of Compliance;

6 (4) in the case of an employee described in sec-  
7 tion 201(2)(A)(iv), to the President, the Equal Em-  
8 ployment Opportunity Commission, and the Merit  
9 Systems Protection Board; and

10 (5) in the case of an employee described in sec-  
11 tion 201(2)(A)(v), to the Equal Employment Oppor-  
12 tunity Commission, the Attorney General, or the Li-  
13 brarian of Congress, as appropriate,  
14 alleging an unlawful employment practice in violation of  
15 this title.

16 (e) DAMAGES.—The powers, remedies, and proce-  
17 dures set forth in section 1977A of the Revised Statutes  
18 (42 U.S.C. 1981a), including the limitations contained in  
19 subsection (b)(3) of such section 1977A, shall be the pow-  
20 ers, remedies, and procedures provided—

21 (1) in the case of an employee described in sec-  
22 tion 201(2)(A)(i), to the Equal Employment Oppor-  
23 tunity Commission, the Attorney General, or any  
24 person;

1           (2) in the case of an employee described in sec-  
2           tion 201(2)(A)(ii), to the Equal Employment Oppor-  
3           tunity Commission, the Attorney General, or such  
4           other entity as is designated by the President by Ex-  
5           ecutive Order;

6           (3) in the case of an employee described in sec-  
7           tion 201(2)(A)(iii), to the Board of Directors of the  
8           Office of Compliance;

9           (4) in the case of an employee described in sec-  
10          tion 201(2)(A)(iv), to the President, the Equal Em-  
11          ployment Opportunity Commission, and the Merit  
12          Systems Protection Board; and

13          (5) in the case of an employee described in sec-  
14          tion 201(2)(A)(v), to the Equal Employment Oppor-  
15          tunity Commission, the Attorney General, or the Li-  
16          brarian of Congress, as appropriate,

17          alleging an unlawful employment practice (not an employ-  
18          ment practice specifically excluded from coverage under  
19          section 1977A(a)(1) of the Revised Statutes) in violation  
20          of this title.

21          **SEC. 208. DISPARATE IMPACT.**

22          (a) GENERAL RULE.—Notwithstanding any other  
23          provision of this Act, “disparate impact”, as that term is  
24          used in section 703(k) of the Civil Rights Act of 1964

1 (42 U.S.C. 2000e-d(k)), on the basis of genetic informa-  
2 tion does not establish a cause of action under this Act.

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

11 (c) MEMBERSHIP.—

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

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

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

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

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

1 (E) 1 member shall be appointed by the  
2 Speaker of the House of Representative;

3 (F) 1 member shall be appointed by the  
4 Minority Leader of the House of Representa-  
5 tive;

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

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

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

23 (d) ADMINISTRATIVE PROVISIONS.—

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

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

9           (3) INFORMATION FROM FEDERAL AGENCIES.—  
10          The Commission may secure directly from any Fed-  
11          eral department or agency such information as the  
12          Commission considers necessary to carry out the  
13          provisions of this section. Upon request of the Com-  
14          mission, the head of such department or agency  
15          shall furnish such information to the Commission.

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

23          (5) POSTAL SERVICES.—The Commission may  
24          use the United States mails in the same manner and

1 under the same conditions as other departments and  
2 agencies of the Federal Government.

3 (e) REPORT.—Not later than 1 year after all of the  
4 members are appointed to the Commission under sub-  
5 section (c)(1), the Commission shall submit to Congress  
6 a report that summarizes the findings of the Commission  
7 and makes such recommendations for legislation as are  
8 consistent with this Act.

9 (f) AUTHORIZATION OF APPROPRIATIONS.—There  
10 are authorized to be appropriated to the Equal Employ-  
11 ment Opportunity Commission such sums as may be nec-  
12 essary to carry out this section.

13 **SEC. 209. CONSTRUCTION.**

14 Nothing in this title shall be construed to—

15 (1) limit the rights or protections of an indi-  
16 vidual under the Americans with Disabilities Act of  
17 1990 (42 U.S.C. 12101 et seq.), including coverage  
18 afforded to individuals under section 102 of such  
19 Act (42 U.S.C. 12112), or under the Rehabilitation  
20 Act of 1973 (29 U.S.C. 701 et seq.);

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

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

5 (3) limit the rights or protections of an indi-  
6 vidual under any other Federal or State statute that  
7 provides equal or greater protection to an individual  
8 than the rights or protections provided for under  
9 this title;

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

12 (5) limit or expand the protections, rights, or  
13 obligations of employees or employers under applica-  
14 ble workers' compensation laws;

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

21 (7) limit the statutory or regulatory authority  
22 of the Occupational Safety and Health Administra-  
23 tion or the Mine Safety and Health Administration  
24 to promulgate or enforce workplace safety and  
25 health laws and regulations.



1 **SEC. 210. MEDICAL INFORMATION THAT IS NOT GENETIC**  
2 **INFORMATION.**

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

11 **SEC. 211. REGULATIONS.**

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

15 **SEC. 212. AUTHORIZATION OF APPROPRIATIONS.**

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

19 **SEC. 213. EFFECTIVE DATE.**

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

22 **TITLE III—MISCELLANEOUS**  
23 **PROVISION**

24 **SEC. 301. SEVERABILITY.**

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

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