

contained in part 46 of title 45, Code of Federal Regulations (or any corresponding or similar regulation or rule); and

(7) limit the statutory or regulatory authority of the Occupational Safety and Health Administration or the Mine Safety and Health Administration to promulgate or enforce workplace safety and health laws and regulations.

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

An employer, employment agency, labor organization, or joint labor-management committee shall not be considered to be in violation of this title based on the use, acquisition, or disclosure of medical information that is not genetic information about a manifested disease, disorder, or pathological condition of an employee or member, including a manifested disease, disorder, or pathological condition that has or may have a genetic basis.

**SEC. 211. REGULATIONS.**

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

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

There are authorized to be appropriated such sums as may be necessary to carry out this title (except for section 208).

**SEC. 213. EFFECTIVE DATE.**

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

**TITLE III—MISCELLANEOUS PROVISION**

**SEC. 301. SEVERABILITY.**

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of such provisions to any person or circumstance shall not be affected thereby.

**AUTHORITY FOR COMMITTEES TO MEET**

**COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS**

Mr. STEVENS. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on October 2, 2003, at 10 a.m. to conduct a hearing on "The Implementation of the Sarbanes-Oxley Act and Restoring Investor Confidence."

The PRESIDING OFFICER. Without objection, it is so ordered.

**COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION**

Mr. STEVENS. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Thursday, October 2, 2003, at 9:30 a.m. on media ownership.

The PRESIDING OFFICER. Without objection, it is so ordered.

**COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION**

Mr. STEVENS. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Thursday, October 2, 2003, at 2:30 p.m. on Amtrak.

The PRESIDING OFFICER. Without objection, it is so ordered.

**COMMITTEE ON FOREIGN RELATIONS**

Mr. STEVENS. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, October 2, 2003 at 1:30 a.m. to hold a Business Meeting.

The PRESIDING OFFICER. Without objection, it is so ordered.

**COMMITTEE ON FOREIGN RELATIONS**

Mr. STEVENS. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, October 2, 2003 at 2:30 p.m. to hold a hearing on U.S. Policy Toward Cuba.

The PRESIDING OFFICER. Without objection, it is so ordered.

**COMMITTEE ON GOVERNMENTAL AFFAIRS**

Mr. STEVENS. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be authorized to meet on Thursday, October 2, 2003 at a time and location to be determined to hold a business meeting to consider the nomination of C. Suzanne Mencer to be Director, Office for Domestic Preparedness, Department of Homeland Security.

The PRESIDING OFFICER. Without objection, it is so ordered.

**COMMITTEE ON HEALTH EDUCATION, LABOR AND PENSIONS**

Mr. STEVENS. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions and House Committee on Energy and Commerce be authorized to meet for a Joint hearing on Managing Biomedical Research to Prevent and Cure Disease in the 21st Century: Matching NIH Policy with Science during the session of the Senate on Thursday, October 2, 2003 at 10 a.m. in SD-106.

The PRESIDING OFFICER. Without objection, it is so ordered.

**COMMITTEE ON THE JUDICIARY**

Mr. STEVENS. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a markup on Thursday, October 2, 2003, at 9:30 a.m. in Dirksen Room 226.

**Agenda**

I. Nominations: Henry W. Saad to be United States Circuit Judge for the Sixth Circuit; Charles W. Pickering, Sr. to be United States Circuit Judge for the Fifth Circuit; Margaret Catharine Rodgers to be United States District Judge for the Northern District of Florida; Roger W. Titus to be United States District Judge for the District of Maryland; George W. Miller to be Judge for the United States Court of Federal Claims; Karin J. Immergut to be United States Attorney for the District of Oregon; and Deborah Ann Spagnoli to be United States Parole Commissioner.

II. Bills: S. 1580. Religious Workers Act of 2003 [Hatch, Kennedy, DeWine] and S. 1545. Development, Relief, and Education for Alien Minors Act of 2003

(the DREAM Act) [Hatch, Durbin, Craig, DeWine, Feingold, Feinstein, Grassley, Kennedy, Leahy, Schumer].

The PRESIDING OFFICER. Without objection, it is so ordered.

**SELECT COMMITTEE ON INTELLIGENCE**

Mr. STEVENS. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Thursday, October 2, 2003 at 2:30 p.m. to hold a closed hearing.

**SUBCOMMITTEE ON NATIONAL PARKS**

Mr. STEVENS. Mr. President, I ask unanimous consent that the Subcommittee on National Parks of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Thursday, October 2, 2003 at 10:00 a.m.

The purpose of the hearing is to receive testimony on the following bills: S. 524, to expand the boundaries of the Fort Donelson National Battlefield to authorize the acquisition and interpretation of lands associated with the campaign that resulted in the capture of the fort in 1862, and for other purposes; S. 1313, to establish the Congaree Swamp National Park in the State of South Carolina, and other purposes; S. 1472, to authorize the Secretary of the Interior to provide for the construction of a statue of Harry S. Truman at Union Station in Kansas City, MO; and S. 1576, to revise the boundary of Harpers Ferry National Historic Park, and for other purposes.

**PRIVILEGE OF THE FLOOR**

Mr. McCONNELL. Mr. President, I ask unanimous consent Denese Merritt, a congressional fellow with Senator SMITH, be granted the privilege of the floor for the duration of the debate on the Iraq supplemental.

Mr. PRESIDENT. Without objection, it is so ordered.

**GENETIC INFORMATION NONDISCRIMINATION ACT OF 2003**

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 247, S. 1053, the Genetic Information Nondiscrimination Act; that the committee-reported substitute amendment be agreed to and treated as original text for purposes of further amendment, and the Snowe substitute, which is at the desk, be agreed to; further, that there be 30 minutes of debate equally divided in the usual form under the control of the chairman and ranking members of the HELP Committee or their designees; that no other amendments be in order; further, that upon the use or yielding back of time the bill be read a third time; that at 2:15 p.m. on Tuesday, October 14, the Senate resume consideration of S. 1053 and there be 15 minutes of debate equally divided, followed by a vote on passage of the bill, all without intervening action or debate.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. REID. No objection.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 1053) to prohibit discrimination on the basis of genetic information with respect to health insurance and employment.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Health, Education, Labor, and Pensions, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

S. 1053

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

[This Act may be cited as the “Genetic Information Nondiscrimination Act of 2003”.]

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

**SEC. 101. AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.**

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

[(1) NO ENROLLMENT RESTRICTION FOR GENETIC SERVICES.—Section 702(a)(1)(F) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1182(a)(1)(F)) is amended by inserting before the period the following: “(including information about a request for or receipt of genetic services)”.]

[(2) NO DISCRIMINATION IN GROUP PREMIUMS BASED ON GENETIC INFORMATION.—Section 702(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1182(b)) is amended by adding at the end the following:

[(3) NO DISCRIMINATION IN GROUP PREMIUMS BASED ON GENETIC INFORMATION.—For purposes of this section, a group health plan, or a health insurance issuer offering group health insurance coverage in connection with a group health plan, shall not adjust premium or contribution amounts for a group on the basis of genetic information concerning an individual in the group or a family member of the individual (including information about a request for or receipt of genetic services).]

[(b) LIMITATIONS ON GENETIC TESTING AND THE COLLECTION OF GENETIC INFORMATION.—Section 702 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1182) is amended by adding at the end the following:

[(c) GENETIC TESTING.—

[(1) LIMITATION ON REQUESTING OR REQUIRING GENETIC TESTING.—A group health plan, or a health insurance issuer offering health insurance coverage in connection with a group health plan, shall not request or require an individual or a family member of such individual to undergo a genetic test.

[(2) RULE OF CONSTRUCTION.—Nothing in this part shall be construed to limit the authority of a health care professional, who is providing health care services with respect to an individual or who is acting on behalf of a group health plan or a health insurance issuer, to request that such individual or a family member of such individual undergo a genetic test. Such a health care professional shall not require that such individual or family member undergo a genetic test.

[(d) COMPLIANCE WITH CERTAIN CONFIDENTIALITY STANDARDS WITH RESPECT TO GE-

NETIC INFORMATION.—With respect to the use or disclosure of genetic information by a group health plan, or a health insurance issuer offering health insurance coverage in connection with a group health plan, such information shall be deemed to be protected health information for purposes of, and shall be subject to, the standards promulgated by the Secretary of Health and Human Services under—

[(1) part C of title XI of the Social Security Act (42 U.S.C. 1320d et seq.); or

[(2) section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191; 110 Stat. 2033).]

[(e) COLLECTION OF GENETIC INFORMATION.—

[(1) LIMITATION ON REQUESTING OR REQUIRING GENETIC INFORMATION.—Except as provided in paragraph (2), a group health plan, or a health insurance issuer offering health insurance coverage in connection with a group health plan, shall not request or require genetic information concerning an individual or a family member of the individual (including information about a request for or receipt of genetic services).

[(2) INFORMATION NEEDED FOR TREATMENT, PAYMENT, AND HEALTH CARE OPERATIONS.—Notwithstanding paragraph (1), a group health plan, or a health insurance issuer offering health insurance coverage in connection with a group health plan, that provides health care items and services to an individual may request genetic information concerning such individual or dependent for purposes of treatment, payment, or health care operations in accordance with the standards for protected health information described in subsection (d) to the extent that the use of such information is otherwise consistent with this section.

[(3) FAILURE TO PROVIDE NECESSARY INFORMATION.—If an individual or dependent refuses to provide the information requested under paragraph (2), and such information is for treatment, payment, or health care operations relating to the individual, the group health plan or health insurance issuer requesting such information shall not be required to provide coverage for the items, services, or treatments with respect to which the requested information relates in any action under part 5.”]

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

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

[(A) the spouse of the individual;

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

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

[(6) GENETIC INFORMATION.—

[(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘genetic information’ means information—

[(i) concerning—

[(I) the genetic tests of an individual;

[(II) the genetic tests of family members of the individual; or

[(III) the occurrence of a disease or disorder in family members of the individual; and

[(ii) that is used to predict risk of disease in asymptomatic or undiagnosed individuals.

[(B) EXCEPTIONS.—The term ‘genetic information’ shall not include—

[(i) information about the sex or age of the individual;

[(ii) information derived from clinical and laboratory tests, such as the chemical, blood, or urine analyses of the individual in-

cluding cholesterol tests, used to determine health status or detect illness or diagnose disease; and

[(iii) information about physical exams of the individual.]

[(7) GENETIC SERVICES.—The term ‘genetic services’ means health services provided for genetic education and counseling.

[(8) GENETIC TEST.—The term ‘genetic test’ means the analysis of human DNA, RNA, chromosomes, proteins, and metabolites, that detect genotypes, mutations, or chromosomal changes. Such term does not include information described in paragraph (6)(B).”]

[(d) REGULATIONS AND EFFECTIVE DATE.—

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

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

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

[(a) AMENDMENTS RELATING TO THE GROUP MARKET.—

[(1) PROHIBITION OF HEALTH DISCRIMINATION ON THE BASIS OF GENETIC INFORMATION OR GENETIC SERVICES.—

[(A) NO ENROLLMENT RESTRICTION FOR GENETIC SERVICES.—Section 2702(a)(1)(F) of the Public Health Service Act (42 U.S.C. 300gg-1(a)(1)(F)) is amended by inserting before the period the following: “(including information about a request for or receipt of genetic services)”.]

[(B) NO DISCRIMINATION IN GROUP PREMIUMS BASED ON GENETIC INFORMATION.—Section 2702(b) of the Public Health Service Act (42 U.S.C. 300gg-1(b)) is amended by adding at the end the following:

[(3) NO DISCRIMINATION IN GROUP PREMIUMS BASED ON GENETIC INFORMATION.—For purposes of this section, a group health plan, or a health insurance issuer offering group health insurance coverage in connection with a group health plan, shall not adjust premium or contribution amounts for a group on the basis of genetic information concerning an individual in the group or a family member of the individual (including information about a request for or receipt of genetic services).”]

[(2) LIMITATIONS ON GENETIC TESTING AND THE COLLECTION OF GENETIC INFORMATION.—Section 2702 of the Public Health Service Act (42 U.S.C. 300gg-1) is amended by adding at the end the following:

[(c) GENETIC TESTING.—

[(1) LIMITATION ON REQUESTING OR REQUIRING GENETIC TESTING.—A group health plan, or a health insurance issuer offering health insurance coverage in connection with a group health plan, shall not request or require an individual or a family member of such individual to undergo a genetic test.

[(2) RULE OF CONSTRUCTION.—Nothing in this part shall be construed to limit the authority of a health care professional, who is providing health care services with respect to an individual or who is acting on behalf of a group health plan or a health insurance issuer, to request that such individual or a family member of such individual undergo a genetic test. Such a health care professional shall not require that such individual or family member undergo a genetic test.

[(d) COMPLIANCE WITH CERTAIN CONFIDENTIALITY STANDARDS WITH RESPECT TO GENETIC INFORMATION.—With respect to the use or disclosure of genetic information by a group health plan, or a health insurance issuer offering health insurance coverage in connection with a group health plan, such

information shall be deemed to be protected health information for purposes of, and shall be subject to, the standards promulgated by the Secretary of Health and Human Services under—

["(1) part C of title XI of the Social Security Act (42 U.S.C. 1320d et seq.); or

["(2) section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191; 110 Stat. 2033).

["(e) COLLECTION OF GENETIC INFORMATION.—

["(1) LIMITATION ON REQUESTING OR REQUIRING GENETIC INFORMATION.—Except as provided in paragraph (2), a group health plan, or a health insurance issuer offering health insurance coverage in connection with a group health plan, shall not request or require genetic information concerning an individual or a family member of the individual (including information about a request for or receipt of genetic services).

["(2) INFORMATION NEEDED FOR TREATMENT, PAYMENT, AND HEALTH CARE OPERATIONS.—Notwithstanding paragraph (1), a group health plan, or a health insurance issuer offering health insurance coverage in connection with a group health plan, that provides health care items and services to an individual may request genetic information concerning such individual or dependent for purposes of treatment, payment, or health care operations in accordance with the standards for protected health information described in subsection (d) to the extent that the use of such information is otherwise consistent with this section.

["(3) FAILURE TO PROVIDE NECESSARY INFORMATION.—If an individual or dependent refuses to provide the information requested under paragraph (2), and such information is for treatment, payment, or health care operations relating to the individual, the group health plan or health insurance issuer requesting such information shall not be required to provide coverage for the items, services, or treatments with respect to which the requested information relates.”

["(3) DEFINITIONS.—Section 2791(d) of the Public Health Service Act (42 U.S.C. 300gg-91(d)) is amended by adding at the end the following:

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

["(A) the spouse of the individual;

["(B) a dependent child of the individual, including a child who is born to or placed for adoption with the individual; and

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

["(16) GENETIC INFORMATION.—

["(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘genetic information’ means information—

["(i) concerning—

["(I) the genetic tests of an individual;

["(II) the genetic tests of family members of the individual; or

["(III) the occurrence of a disease or disorder in family members of the individual; and

["(ii) that is used to predict risk of disease in asymptomatic or undiagnosed individuals.

["(B) EXCEPTIONS.—The term ‘genetic information’ shall not include—

["(i) information about the sex or age of the individual;

["(ii) information derived from clinical and laboratory tests, such as the chemical, blood, or urine analyses of the individual including cholesterol tests, used to determine health status or detect illness or diagnose disease; and

["(iii) information about physical exams of the individual.

["(17) GENETIC SERVICES.—The term ‘genetic services’ means health services provided for genetic education and counseling.

["(18) GENETIC TEST.—The term ‘genetic test’ means the analysis of human DNA, RNA, chromosomes, proteins, and metabolites, that detect genotypes, mutations, or chromosomal changes. Such term does not include information described in paragraph (16)(B).”

["(b) AMENDMENT RELATING TO THE INDIVIDUAL MARKET.—The first subpart 3 of part B of title XXVII of the Public Health Service Act (42 U.S.C. 300gg-51 et seq.) (relating to other requirements) is amended—

["(1) by redesignating such subpart as subpart 2; and

["(2) by adding at the end the following:

["SEC. 2753. PROHIBITION OF HEALTH DISCRIMINATION ON THE BASIS OF GENETIC INFORMATION.

["(a) PROHIBITION ON GENETIC INFORMATION AS A CONDITION OF ELIGIBILITY.—A health insurance issuer offering health insurance coverage in the individual market may not use genetic information as a condition of eligibility of an individual to enroll in individual health insurance coverage (including information about a request for or receipt of genetic services).

["(b) PROHIBITION ON GENETIC INFORMATION IN SETTING PREMIUM RATES.—For purposes of this section, a health insurance issuer offering health insurance coverage in the individual market shall not adjust premium or contribution amounts for an individual on the basis of genetic information concerning the individual or a family member of the individual (including information about a request for or receipt of genetic services).

["(c) GENETIC TESTING.—

["(1) LIMITATION ON REQUESTING OR REQUIRING GENETIC TESTING.—A health insurance issuer offering health insurance coverage in the individual market shall not request or require an individual or a family member of such individual to undergo a genetic test.

["(2) RULE OF CONSTRUCTION.—Nothing in this part shall be construed to limit the authority of a health care professional, who is providing health care services with respect to an individual or who is acting on behalf of a health insurance issuer, to request that such individual or a family member of such individual undergo a genetic test. Such a health care professional shall not require that such individual or family member undergo a genetic test.

["(d) COMPLIANCE WITH CERTAIN CONFIDENTIALITY STANDARDS WITH RESPECT TO GENETIC INFORMATION.—With respect to the use or disclosure of genetic information by a health insurance issuer offering health insurance coverage in the individual market, such information shall be deemed to be protected health information for purposes of, and shall be subject to, the standards promulgated by the Secretary of Health and Human Services under—

["(1) part C of title XI of the Social Security Act (42 U.S.C. 1320d et seq.); or

["(2) section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191; 110 Stat. 2033).

["(e) COLLECTION OF GENETIC INFORMATION.—

["(1) LIMITATION ON REQUESTING OR REQUIRING GENETIC INFORMATION.—Except as provided in paragraph (2), a health insurance issuer offering health insurance coverage in the individual market shall not request or require genetic information concerning an individual or a family member of the individual (including information about a request for or receipt of genetic services).

["(2) INFORMATION NEEDED FOR TREATMENT, PAYMENT, AND HEALTH CARE OPERATIONS.—Notwithstanding paragraph (1), a health in-

surance issuer offering health insurance coverage in the individual market that provides health care items and services to an individual may request genetic information concerning such individual or dependent for purposes of treatment, payment, or health care operations in accordance with the standards for protected health information described in subsection (d) to the extent that the use of such information is otherwise consistent with this section.

["(3) FAILURE TO PROVIDE NECESSARY INFORMATION.—If an individual or dependent refuses to provide the information requested under paragraph (2), and such information is for treatment, payment, or health care operations relating to the individual, the health insurance issuer requesting such information shall not be required to provide coverage for the items, services, or treatments with respect to which the requested information relates.”

["(c) REGULATIONS AND EFFECTIVE DATE.—

["(1) REGULATIONS.—Not later than 1 year after the date of enactment of this title, the Secretary of Labor and the Secretary of Health and Human Services (as the case may be) shall issue final regulations in an accessible format to carry out the amendments made by this section.

["(2) EFFECTIVE DATE.—The amendments made by this section shall apply—

["(A) with respect to group health plans, and health insurance coverage offered in connection with group health plans, for plan years beginning after the date that is 18 months after the date of enactment of this title; and

["(B) with respect to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market after the date that is 18 months after the date of enactment of this title.

["SEC. 103. AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.

["(a) PROHIBITION OF HEALTH DISCRIMINATION ON THE BASIS OF GENETIC INFORMATION OR GENETIC SERVICES.—

["(1) NO ENROLLMENT RESTRICTION FOR GENETIC SERVICES.—Section 9802(a)(1)(F) of the Internal Revenue Code of 1986 is amended by inserting before the period the following: “(including information about a request for or receipt of genetic services)”.

["(2) NO DISCRIMINATION IN GROUP PREMIUMS BASED ON GENETIC INFORMATION.—Section 9802(b) of the Internal Revenue Code of 1986 is amended by adding at the end the following:

["(3) NO DISCRIMINATION IN GROUP PREMIUMS BASED ON GENETIC INFORMATION.—For purposes of this section, a group health plan shall not adjust premium or contribution amounts for a group on the basis of genetic information concerning an individual in the group or a family member of the individual (including information about a request for or receipt of genetic services).”

["(b) LIMITATIONS ON GENETIC TESTING AND THE COLLECTION OF GENETIC INFORMATION.—Section 9802 of the Internal Revenue Code of 1986 is amended by adding at the end the following:

["(d) GENETIC TESTING AND GENETIC SERVICES.—

["(1) LIMITATION ON REQUESTING OR REQUIRING GENETIC TESTING.—A group health plan shall not request or require an individual or a family member of such individual to undergo a genetic test.

["(2) RULE OF CONSTRUCTION.—Nothing in this part shall be construed to limit the authority of a health care professional, who is providing health care services with respect to an individual or who is acting on behalf of a group health plan, to request that such individual or a family member of such individual undergo a genetic test. Such a health

care professional shall not require that such individual or family member undergo a genetic test.

[(e) COMPLIANCE WITH CERTAIN CONFIDENTIALITY STANDARDS WITH RESPECT TO GENETIC INFORMATION.—With respect to the use or disclosure of genetic information by a group health plan, such information shall be deemed to be protected health information for purposes of, and shall be subject to, the standards promulgated by the Secretary of Health and Human Services under—

[(1) part C of title XI of the Social Security Act (42 U.S.C. 1320d et seq.); or

[(2) section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191; 110 Stat. 2033).

[(f) COLLECTION OF GENETIC INFORMATION.—

[(1) LIMITATION ON REQUESTING OR REQUIRING GENETIC INFORMATION.—Except as provided in paragraph (2), a group health plan shall not request or require genetic information concerning an individual or a family member of the individual (including information about a request for or receipt of genetic services).

[(2) INFORMATION NEEDED FOR TREATMENT, PAYMENT, AND HEALTH CARE OPERATIONS.—Notwithstanding paragraph (1), a group health plan that provides health care items and services to an individual may request genetic information concerning such individual or dependent for purposes of treatment, payment, or health care operations in accordance with the standards for protected health information described in subsection (e) to the extent that the use of such information is otherwise consistent with this section.

[(3) FAILURE TO PROVIDE NECESSARY INFORMATION.—If an individual or dependent refuses to provide the information requested under paragraph (2), and such information is for treatment, payment, or health care operations relating to the individual, the group health plan requesting such information shall not be required to provide coverage for the items, services, or treatments with respect to which the requested information relates.”

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

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

[(A) the spouse of the individual;

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

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

[(7) GENETIC INFORMATION.—

[(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘genetic information’ means information—

[(i) concerning—

[(I) the genetic tests of an individual;

[(II) the genetic tests of family members of the individual; or

[(III) the occurrence of a disease or disorder in family members of the individual; and

[(ii) that is used to predict risk of disease in asymptomatic or undiagnosed individuals.

[(B) EXCEPTIONS.—The term ‘genetic information’ shall not include—

[(i) information about the sex or age of the individual;

[(ii) information derived from clinical and laboratory tests, such as the chemical, blood, or urine analyses of the individual including cholesterol tests, used to determine health status or detect illness or diagnose disease; and

[(iii) information about physical exams of the individual.

[(8) GENETIC SERVICES.—The term ‘genetic services’ means health services provided for genetic education and counseling.

[(9) GENETIC TEST.—The term ‘genetic test’ means the analysis of human DNA, RNA, chromosomes, proteins, and metabolites, that detect genotypes, mutations, or chromosomal changes. Such term does not include information described in paragraph (7)(B).”

[(d) REGULATIONS AND EFFECTIVE DATE.—

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

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

#### SEC. 104. ASSURING COORDINATION.

[(The Secretary of the Treasury, the Secretary of Health and Human Services, and the Secretary of Labor shall ensure, through the execution of an interagency memorandum of understanding among such Secretaries, that—

[(1) regulations, rulings, and interpretations issued by such Secretaries relating to the same matter over which two or more such Secretaries have responsibility under this title (and the amendments made by this title) are administered so as to have the same effect at all times; and

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

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

#### SEC. 201. DEFINITIONS.

[(In this title:

[(1) COMMISSION.—The term ‘Commission’ means the Equal Employment Opportunity Commission as created by section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4).

[(2) EMPLOYEE; EMPLOYER; EMPLOYMENT AGENCY; LABOR ORGANIZATION; AND MEMBER.—The terms—

[(A) ‘employee’, ‘employer’, ‘employment agency’, and ‘labor organization’ have the meanings given such terms in section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e); and

[(B) ‘employee’ and ‘member’, as used with respect to a labor organization, include an applicant for employment and an applicant for membership in a labor organization, respectively.

[(3) FAMILY MEMBER.—The term ‘family member’ means with respect to an individual—

[(A) the spouse of the individual;

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

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

[(4) GENETIC INFORMATION.—

[(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘genetic information’ means information—

[(i) concerning—

[(I) the genetic tests of an individual;

[(II) the genetic tests of family members of the individual; or

[(III) the occurrence of a disease or disorder in family members of the individual; and

[(ii) that is used to predict risk of disease in asymptomatic or undiagnosed individuals.

[(B) EXCEPTIONS.—The term ‘genetic information’ shall not include—

[(i) information about the sex or age of the individual;

[(ii) information derived from clinical and laboratory tests, such as the chemical, blood, or urine analyses of the individual including cholesterol tests, used to determine health status or detect illness or diagnose disease; and

[(iii) information about physical exams of the individual.

[(5) GENETIC MONITORING.—The term ‘genetic monitoring’ means the periodic examination of employees to evaluate acquired modifications to their genetic material, such as chromosomal damage or evidence of increased occurrence of mutations, that may have developed in the course of employment due to exposure to toxic substances in the workplace, in order to identify, evaluate, and respond to the effects of or control adverse environmental exposures in the workplace.

[(6) GENETIC SERVICES.—The term ‘genetic services’ means health services provided for genetic education and counseling.

[(7) GENETIC TEST.—The term ‘genetic test’ means the analysis of human DNA, RNA, chromosomes, proteins, and metabolites, that detect genotypes, mutations, or chromosomal changes. Such term does not include information described in paragraph (4)(B).

#### SEC. 202. EMPLOYER PRACTICES.

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

[(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to the compensation, terms, conditions, or privileges of employment of the individual, because of genetic information with respect to the individual (or information about a request for or the receipt of genetic services by such individual or family member of such individual); or

[(2) to limit, segregate, or classify the employees of the employer in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the status of the individual as an employee, because of genetic information with respect to the individual (or information about a request for or the receipt of genetic services by such individual or family member of such individual).

[(b) LIMITATION ON COLLECTION OF GENETIC INFORMATION.—It shall be an unlawful employment practice for an employer to intentionally request, require, or purchase genetic information with respect to an employee or a family member of the employee (or information about a request for the receipt of genetic services by such employee or a family of such employee) except—

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

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

[(B)(i) the employee provides prior, knowing, voluntary, and written authorization; or

[(ii) the genetic monitoring is required by Federal, State, or local law;

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

[(D) the monitoring conforms to any Federal or State genetic monitoring regulations, including any such regulations that may be promulgated by the Secretary of Labor pursuant to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) or the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.); and

[(E) the employer, excluding any licensed or certified health care professional that is involved in the genetic monitoring program,

receives the results of the monitoring only in aggregate terms that do not disclose the identity of specific employees;

[(2) where—

[(A) health or genetic services are offered by the employer;

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

[(C) only the employee (or family member if the family member is receiving genetic services) and the licensed or certified health care professionals involved in providing such services receive individually identifiable information concerning the results of such services; or

[(3) where the request or requirement is necessary to comply with Federal, State, or local law.

[(c) LIMITATION.—In the case of genetic information to which paragraph (1), (2), or (3) of subsection (b) applies, such information may not be used in violation of paragraph (1) or (2) of subsection (a).

[(d) EXCEPTION.—

[(1) IN GENERAL.—An employer shall not be considered to engage in an employment practice that is unlawful under this title because of its disparate impact, on the basis that the employer applies a qualification standard, test, or other selection criterion that screens out or tends to screen out, or otherwise denies a job benefit to, an individual, if the standard, test, or other selection criterion is shown to be job-related with respect to the employment position involved and consistent with business necessity.

[(2) QUALIFICATION STANDARD.—In this subsection, the term “qualification standard” may include a requirement that an individual shall not pose a direct threat to the health or safety of other individuals in the workplace.

[(e) RULE OF CONSTRUCTION RELATING TO GROUP HEALTH PLANS.—Nothing in this section shall be construed to prohibit a group health plan (as such term is defined in section 733(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1191b(a))), or a health insurance issuer offering group health insurance coverage in connection with a group health plan, from making a request described in subsection (b) if such request is consistent with the provisions of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1181 et seq.), title XXVII of the Public Health Service (42 U.S.C. 300gg et seq.), and chapter 100 of the Internal Revenue Code of 1986.

#### [SEC. 203. EMPLOYMENT AGENCY PRACTICES.

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

[(1) to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of genetic information with respect to the individual (or information about a request for or the receipt of genetic services by such individual or family member of such individual); or

[(2) to limit, segregate, or classify individuals or fail or refuse to refer for employment any individual in any way that would deprive or tend to deprive any individual of employment opportunities, or otherwise adversely affect the status of the individual as an employee, because of genetic information with respect to the individual (or information about a request for or the receipt of genetic services by such individual or family member of such individual).

[(b) LIMITATION ON COLLECTION OF GENETIC INFORMATION.—It shall be an unlawful employment practice for an employment agency—

[(1) to intentionally request, require, or purchase genetic information with respect to

an employee or family member of the employee (or information about a request for or the receipt of genetic services by such employee or family member of such employee), except that the provisions of section 202(b) shall apply with respect to employment agencies and employees (and the family members of the employees) under this paragraph in the same manner and to the same extent as such provisions apply to employers and employees (and the family members of the employees) under section 202(b); or

[(2) to cause or attempt to cause an employer to discriminate against an individual in violation of this title.

[(c) LIMITATION AND EXCEPTION.—Subsections (c) and (d) of section 202 shall apply with respect to employment agencies and employees (and the family members of the employees) under this section in the same manner and to the same extent as such provisions apply to employers and employees (and the family members of the employees) under section 202.

#### [SEC. 204. LABOR ORGANIZATION PRACTICES.

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

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

[(2) to limit, segregate, or classify the members of the organization, or fail or refuse to refer for employment any individual, in any way that would deprive or tend to deprive any individual of employment opportunities, or otherwise adversely affect the status of the individual as an employee, because of genetic information with respect to the individual (or information about a request for or the receipt of genetic services by such individual or family member of such individual).

[(b) LIMITATION ON COLLECTION OF GENETIC INFORMATION.—It shall be an unlawful employment practice for a labor organization—

[(1) to intentionally request, require, or purchase genetic information with respect to an individual who is a member of a labor organization or a family member of the individual (or information about a request for or the receipt of genetic services by such individual or family member of such individual) except that the provisions of section 202(b) shall apply with respect to labor organizations and such individuals (and their family members) under this paragraph in the same manner and to the same extent as such provisions apply to employers and employees (and the family members of the employees) under section 202(b); or

[(2) to cause or attempt to cause an employer to discriminate against an individual in violation of this title.

[(c) LIMITATION AND EXCEPTION.—Subsections (c) and (d) of section 202 shall apply with respect to labor organizations and individuals who are members of labor organizations (and the family members of the individuals) under this section in the same manner and to the same extent as such provisions apply to employers and employees (and the family members of the employees) under section 202.

#### [SEC. 205. TRAINING PROGRAMS.

[(a) USE OF GENETIC INFORMATION.—It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs—

[(1) to discriminate against any individual because of genetic information with respect

to the individual (or information about a request for or the receipt of genetic services by such individual or a family member of such individual) in admission to, or employment in, any program established to provide apprenticeship or other training or retraining; or

[(2) to limit, segregate, or classify the applicants for or participants in such apprenticeship or other training or retraining, or fail or refuse to refer for employment any individual, in any way that would deprive or tend to deprive any individual of employment opportunities, or otherwise adversely affect the status of the individual as an employee, because of genetic information with respect to the individual (or information about a request for or receipt of genetic services by such individual or family member of such individual).

[(b) LIMITATION ON COLLECTION OF GENETIC INFORMATION.—It shall be an unlawful employment practice for an employer, labor organization, or joint labor-management committee described in subsection (a)—

[(1) to intentionally request, require, or purchase genetic information with respect to an individual who is an applicant for or a participant in such apprenticeship or other training or retraining (or information about a request for or the receipt of genetic services by such individual or family member of such individual) except that the provisions of section 202(b) shall apply with respect to such employers, labor organizations, and joint labor-management committees and to such individuals (and their family members) under this paragraph in the same manner and to the same extent as such provisions apply to employers and employees (and their family members) under section 202(b); or

[(2) to cause or attempt to cause an employer to discriminate against an applicant for or a participant in such apprenticeship or other training or retraining in violation of this title.

[(c) LIMITATION AND EXCEPTION.—Subsections (c) and (d) of section 202 shall apply with respect to employers, labor organizations, and joint labor-management committees described in subsection (a) and to individuals who are applicants for or participants in apprenticeship or other training or retraining (and the family members of the individuals) under this section in the same manner and to the same extent as the provisions apply to employers and to employees (and the family members of the employees) under section 202.

#### [SEC. 206. CONFIDENTIALITY OF GENETIC INFORMATION.

[(a) TREATMENT OF INFORMATION AS PART OF CONFIDENTIAL MEDICAL RECORD.—

[(1) IN GENERAL.—If an employer, employment agency, labor organization, or joint labor-management committee possesses genetic information about an employee or member (or information about a request for or receipt of genetic services by such employee or member or family member of such employee or member), such information shall be treated and maintained as part of the employee's or member's confidential medical records.

[(2) LIMITATION ON DISCLOSURE.—An employer, employment agency, labor organization, or joint labor-management committee shall not disclose genetic information concerning an employee or member (or information about a request for or receipt of genetic services by such employee or member or family member of such employee or member) except—

[(A) to the employee (or family member if the family member is receiving the genetic services) or member at the request of the employee or member;

[(B) to an occupational or other health researcher if the research is conducted in compliance with the regulations and protections provided for under part 46 of title 45, Code of Federal Regulations (or any corresponding similar regulation or rule);

[(C) under legal compulsion of a Federal or State court order, except that if the court order was secured without the knowledge of the individual to whom the information refers, the employer shall provide the individual with adequate notice to challenge the court order;

[(D) to government officials who are investigating compliance with this title if the information is relevant to the investigation;

[(E) to the extent that such disclosure is necessary to comply with Federal, State, or local law; or

[(F) as otherwise provided for in this title.

[(b) **RULE OF CONSTRUCTION RELATING TO GROUP HEALTH PLANS.**—Nothing in this section shall be construed to prohibit a group health plan (as such term is defined in section 733(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1191b(a))), or a health insurance issuer offering group health insurance coverage in connection with a group health plan, from using or disclosing information described in subsection (a) if such use of disclosure is consistent with the provisions of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1181 et seq.), title XXVII of the Public Health Service (42 U.S.C. 300gg et seq.), and chapter 100 of the Internal Revenue Code of 1986.

**[SEC. 207. ENFORCEMENT.**

[(The powers, remedies, and procedures set forth in sections 705, 706, 707, 709, and 710 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4, 2000e-5, 2000e-6, 2000e-8, and 2000e-9) shall be the powers, remedies, and procedures that this title provides to the Commission, to the Attorney General, or to any person alleging an unlawful employment practice in violation of section 202 (other than subsection (e) of such section), 203, 204, 205, or 206(a) or the regulations promulgated under section 210, concerning employment.

**[SEC. 208. AMENDMENT TO THE REVISED STATUTES.**

[(a) **RIGHT OF RECOVERY.**—Section 1977A(a) of the Revised Statutes (42 U.S.C. 1981a(a)) is amended by adding at the end the following:

[(4) **GENETIC INFORMATION.**—In an action brought by a complaining party under the powers, remedies, and procedures set forth in section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5), as authorized under section 207 of the Genetic Information Nondiscrimination Act of 2003, against a respondent who is engaging (or has engaged) in an intentional unlawful employment practice prohibited by section 202 (other than subsection (e) of such section), 203, 204, 205 or 206(a) of such Genetic Information Nondiscrimination Act of 2003 against an individual (other than an action involving an employment practice that is allegedly unlawful because of its disparate impact), the complaining party may recover compensatory and punitive damages as permitted under subsection (b), in addition to any relief otherwise provided for under section 706(g) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(g)), from the respondent.”

[(b) **CONFORMING AMENDMENTS.**—Section 1977A(d) of the Revised Statutes (42 U.S.C. 1981a(d)) is amended—

[(1) in paragraph (1)—

[(A) in subparagraph (A), by striking “or” at the end;

[(B) in subparagraph (B), by striking the period and inserting “; or”; and

[(C) by adding at the end the following:

[(C) in the case of a person seeking to bring an action under subsection (a)(4), the

Equal Employment Opportunity Commission, the Attorney General, or a person who may bring an action or proceeding under title II of the Genetic Information Nondiscrimination Act of 2003.”; and

[(2) in paragraph (2), by striking “or the discrimination or the violation described in paragraph (2),” and inserting “the discrimination or the violation described in paragraph (2), or the intentional unlawful employment practice described in paragraph (4).”

**[SEC. 209. CONSTRUCTION.**

—[Nothing in this title shall be construed to—

[(1) limit the rights or protections of an individual under the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), including coverage afforded to individuals under section 102 of such Act (42 U.S.C. 12112), or under the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), except that an individual may not bring an action against an employer, employment agency, labor organization, or joint labor-management committee pursuant to this title and also pursuant to the Americans with Disabilities Act of 1990 or the Rehabilitation Act of 1973, if the actions are predicated on the same facts or a common occurrence;

[(2) limit the rights or protections of an individual to bring an action under this title against an employer, employment agency, labor organization, or joint labor-management committee for a violation of this title, except that an individual may not bring an action against such an employer, employment agency, labor organization, or joint labor-management committee, with respect to a group health plan or a health insurance issuer offering health insurance coverage in connection with a group health plan, under this title if the action is based on a violation of a provision of the amendments made by title I;

[(3) limit the rights or protections of an individual under any other Federal or State statute that provides equal or greater protection to an individual than the rights or protections provided for under this title;

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

[(5) limit the authority of a Federal department or agency to conduct or sponsor occupational or other health research that is conducted in compliance with the regulations contained in part 46 of title 45, Code of Federal Regulations (or any corresponding or similar regulation or rule); and

[(6) limit the statutory or regulatory authority of the Occupational Safety and Health Administration or the Mine Safety and Health Administration to promulgate or enforce workplace safety and health laws and regulations.

**[SEC. 210. REGULATIONS.**

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

**[SEC. 211. SEVERABILITY.**

[(If any provision of this title, an amendment made by this title, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this title, the amendments made by this title, and the application of such provisions to any person or circumstance shall not be affected thereby.

**[SEC. 212. AUTHORIZATION OF APPROPRIATIONS.**

[(There are authorized to be appropriated such sums as may be necessary to carry out this title.

**[SEC. 213. EFFECTIVE DATE.**

[(a) **IN GENERAL.**—This title takes effect on the date that is 18 months after the date of enactment of this Act.

[(b) **ENFORCEMENT.**—Notwithstanding subsection (a), no enforcement action shall be commenced under section 207 until the date on which the Commission issues final regulations under section 210.

**SECTION 1. SHORT TITLE.**

[(This Act may be cited as the “Genetic Information Nondiscrimination Act of 2003”).

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

**SEC. 101. AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.**

[(a) **PROHIBITION OF HEALTH DISCRIMINATION ON THE BASIS OF GENETIC INFORMATION OR GENETIC SERVICES.**—

[(1) **NO ENROLLMENT RESTRICTION FOR GENETIC SERVICES.**—Section 702(a)(1)(F) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1182(a)(1)(F)) is amended by inserting before the period the following: “(including information about a request for or receipt of genetic services by an individual or family member of such individual).”

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

[(A) in paragraph (2)(A), by inserting before the semicolon the following: “except as provided in paragraph (3)”; and

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

[(3) **NO DISCRIMINATION IN GROUP PREMIUMS BASED ON GENETIC INFORMATION.**—For purposes of this section, a group health plan, or a health insurance issuer offering group health insurance coverage in connection with a group health plan, shall not adjust premium or contribution amounts for a group on the basis of genetic information concerning an individual in the group or a family member of the individual (including information about a request for or receipt of genetic services by an individual or family member of such individual).”

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

[(c) **GENETIC TESTING.**—

[(1) **LIMITATION ON REQUESTING OR REQUIRING GENETIC TESTING.**—A group health plan, or a health insurance issuer offering health insurance coverage in connection with a group health plan, shall not request or require an individual or a family member of such individual to undergo a genetic test.

[(2) **RULE OF CONSTRUCTION.**—Nothing in this part shall be construed to—

[(A) limit the authority of a health care professional who is providing health care services with respect to an individual to request that such individual or a family member of such individual undergo a genetic test;

[(B) limit the authority of a health care professional who is employed by or affiliated with a group health plan or a health insurance issuer and who is providing health care services to an individual as part of a bona fide wellness program to notify such individual of the availability of a genetic test or to provide information to such individual regarding such genetic test; or

[(C) authorize or permit a health care professional to require that an individual undergo a genetic test.

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

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

[(m) **ENFORCEMENT OF GENETIC NONDISCRIMINATION REQUIREMENTS.**—

[(1) **INJUNCTIVE RELIEF FOR IRREPARABLE HARM.**—With respect to any violation of subsection (a)(1)(F), (b)(3), or (c) of section 702, a

participant or beneficiary may seek relief under subsection 502(a)(1)(B) prior to the exhaustion of available administrative remedies under section 503 if it is demonstrated to the court, by a preponderance of the evidence, that the exhaustion of such remedies would cause irreparable harm to the health of the participant or beneficiary. Any determinations that already have been made under section 503 in such case, or that are made in such case while an action under this paragraph is pending, shall be given due consideration by the court in any action under this subsection in such case.

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

“(A) **REINSTATEMENT OF BENEFITS WHERE EQUITABLE RELIEF HAS BEEN AWARDED.**—The recovery of benefits by a participant or beneficiary under a civil action under this section may include an administrative penalty under subparagraph (B) and the retroactive reinstatement of coverage under the plan involved to the date on which the participant or beneficiary was denied eligibility for coverage if—

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

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

“(B) **ADMINISTRATIVE PENALTY.**—

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

“(ii) **NONCOMPLIANCE PERIOD.**—For purposes of clause (i), the term ‘noncompliance period’ means the period—

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

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

“(iii) **PAYMENT TO PARTICIPANT OR BENEFICIARY.**—A penalty collected under this subparagraph shall be paid to the participant or beneficiary involved.

“(3) **SECRETARIAL ENFORCEMENT AUTHORITY.**—

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

“(B) **AMOUNT.**—

“(i) **IN GENERAL.**—The amount of the penalty imposed by subparagraph (A) shall be \$100 for each day in the noncompliance period with respect to each individual to whom such failure relates.

“(ii) **NONCOMPLIANCE PERIOD.**—For purposes of this paragraph, the term ‘noncompliance period’ means, with respect to any failure, the period—

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

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

“(C) **MINIMUM PENALTIES WHERE FAILURE DISCOVERED.**—Notwithstanding clauses (i) and (ii) of subparagraph (D):

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

“(I) which are not corrected before the date on which the plan receives a notice from the Secretary of such violation; and

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

the amount of penalty imposed by subparagraph (A) by reason of such failures with respect to such individual shall not be less than \$2,500.

“(ii) **HIGHER MINIMUM PENALTY WHERE VIOLATIONS ARE MORE THAN DE MINIMIS.**—To the extent violations for which any person is liable under this paragraph for any year are more than de minimis, clause (i) shall be applied by substituting ‘\$15,000’ for ‘\$2,500’ with respect to such person.

“(D) **LIMITATIONS.**—

“(i) **PENALTY NOT TO APPLY WHERE FAILURE NOT DISCOVERED EXERCISING REASONABLE DILIGENCE.**—No penalty shall be imposed by subparagraph (A) on any failure during any period for which it is established to the satisfaction of the Secretary that the person otherwise liable for such penalty did not know, and exercising reasonable diligence would not have known, that such failure existed.

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

“(I) such failure was due to reasonable cause and not to willful neglect; and

“(II) such failure is corrected during the 30-day period beginning on the first date the person otherwise liable for such penalty knew, or exercising reasonable diligence would have known, that such failure existed.

“(iii) **OVERALL LIMITATION FOR UNINTENTIONAL FAILURES.**—In the case of failures which are due to reasonable cause and not to willful neglect, the penalty imposed by subparagraph (A) for failures shall not exceed the amount equal to the lesser of—

“(I) 10 percent of the aggregate amount paid or incurred by the employer (or predecessor employer) during the preceding taxable year for group health plans; or

“(II) \$500,000.

“(E) **WAIVER BY SECRETARY.**—In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the penalty imposed by subparagraph (A) to the extent that the payment of such penalty would be excessive relative to the failure involved.”

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

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

“(A) the spouse of the individual;

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

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

“(6) **GENETIC INFORMATION.**—

“(A) **IN GENERAL.**—Except as provided in subparagraph (B), the term ‘genetic information’ means information about—

“(i) an individual’s genetic tests;

“(ii) the genetic tests of family members of the individual; or

“(iii) the occurrence of a disease or disorder in family members of the individual.

“(B) **EXCLUSIONS.**—The term ‘genetic information’ shall not include information about the sex or age of an individual.

“(7) **GENETIC TEST.**—

“(A) **IN GENERAL.**—The term ‘genetic test’ means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes.

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

“(i) an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or

“(ii) an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.

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

“(A) a genetic test;

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

“(C) genetic education.”

(e) **REGULATIONS AND EFFECTIVE DATE.**—

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

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

## SEC. 102. AMENDMENTS TO THE PUBLIC HEALTH SERVICE ACT.

(a) **AMENDMENTS RELATING TO THE GROUP MARKET.**—

(1) **PROHIBITION OF HEALTH DISCRIMINATION ON THE BASIS OF GENETIC INFORMATION OR GENETIC SERVICES.**—

(A) **NO ENROLLMENT RESTRICTION FOR GENETIC SERVICES.**—Section 2702(a)(1)(F) of the Public Health Service Act (42 U.S.C. 300gg–1(a)(1)(F)) is amended by inserting before the period the following: “(including information about a request for or receipt of genetic services by an individual or family member of such individual)”.

(B) **NO DISCRIMINATION IN GROUP PREMIUMS BASED ON GENETIC INFORMATION.**—Section 2702(b) of the Public Health Service Act (42 U.S.C. 300gg–1(b)) is amended—

(i) in paragraph (2)(A), by inserting before the semicolon the following: “, except as provided in paragraph (3)”; and

(ii) by adding at the end the following:

“(3) **NO DISCRIMINATION IN GROUP PREMIUMS BASED ON GENETIC INFORMATION.**—For purposes of this section, a group health plan, or a health insurance issuer offering group health insurance coverage in connection with a group health plan, shall not adjust premium or contribution amounts for a group on the basis of genetic information concerning an individual in the group or a family member of the individual (including information about a request for or receipt of genetic services by an individual or family member of such individual).”

(2) **LIMITATIONS ON GENETIC TESTING.**—Section 2702 of the Public Health Service Act (42 U.S.C. 300gg–1) is amended by adding at the end the following:

“(c) **GENETIC TESTING.**—

“(1) **LIMITATION ON REQUESTING OR REQUIRING GENETIC TESTING.**—A group health plan, or a health insurance issuer offering health insurance coverage in connection with a group health plan, shall not request or require an individual or a family member of such individual to undergo a genetic test.

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

“(A) limit the authority of a health care professional who is providing health care services with respect to an individual to request that such individual or a family member of such individual undergo a genetic test;

“(B) limit the authority of a health care professional who is employed by or affiliated with a group health plan or a health insurance issuer and who is providing health care services to an individual as part of a bona fide wellness program to notify such individual of the availability of a genetic test or to provide information to such individual regarding such genetic test; or

“(C) authorize or permit a health care professional to require that an individual undergo a genetic test.

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

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

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

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

“(B) AMOUNT.—

“(i) IN GENERAL.—The amount of the penalty imposed under this paragraph shall be \$100 for each day in the noncompliance period with respect to each individual to whom such failure relates.

“(ii) NONCOMPLIANCE PERIOD.—For purposes of this paragraph, the term ‘noncompliance period’ means, with respect to any failure, the period—

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

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

“(C) MINIMUM PENALTIES WHERE FAILURE DISCOVERED.—Notwithstanding clauses (i) and (ii) of subparagraph (D):

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

“(I) which are not corrected before the date on which the plan receives a notice from the Secretary of such violation; and

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

the amount of penalty imposed by subparagraph (A) by reason of such failures with respect to such individual shall not be less than \$2,500.

“(ii) HIGHER MINIMUM PENALTY WHERE VIOLATIONS ARE MORE THAN DE MINIMIS.—To the extent violations for which any person is liable under this paragraph for any year are more than de minimis, clause (i) shall be applied by substituting ‘\$15,000’ for ‘\$2,500’ with respect to such person.

“(D) LIMITATIONS.—

“(i) PENALTY NOT TO APPLY WHERE FAILURE NOT DISCOVERED EXERCISING REASONABLE DILIGENCE.—No penalty shall be imposed by subparagraph (A) on any failure during any period for which it is established to the satisfaction of the Secretary that the person otherwise liable for such penalty did not know, and exercising reasonable diligence would not have known, that such failure existed.

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

“(I) such failure was due to reasonable cause and not to willful neglect; and

“(II) such failure is corrected during the 30-day period beginning on the first date the person otherwise liable for such penalty knew, or exercising reasonable diligence would have known, that such failure existed.

“(iii) OVERALL LIMITATION FOR UNINTENTIONAL FAILURES.—In the case of failures which are due to reasonable cause and not to willful neglect, the penalty imposed by subparagraph (A) for failures shall not exceed the amount equal to the lesser of—

“(I) 10 percent of the aggregate amount paid or incurred by the employer (or predecessor employer) during the preceding taxable year for group health plans; or

“(II) \$500,000.

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

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

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

“(A) the spouse of the individual;

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

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

“(16) GENETIC INFORMATION.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘genetic information’ means information about—

“(i) an individual’s genetic tests;

“(ii) the genetic tests of family members of the individual; or

“(iii) the occurrence of a disease or disorder in family members of the individual.

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

“(17) GENETIC TEST.—

“(A) IN GENERAL.—The term ‘genetic test’ means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes.

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

“(i) an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or

“(ii) an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.

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

“(A) a genetic test;

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

“(C) genetic education.”.

(b) AMENDMENT RELATING TO THE INDIVIDUAL MARKET.—

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

(A) by redesignating such subpart as subpart 2; and

(B) by adding at the end the following:

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

“(a) PROHIBITION ON GENETIC INFORMATION AS A CONDITION OF ELIGIBILITY.—A health insurance issuer offering health insurance coverage in the individual market may not establish rules for the eligibility (including continued eligibility) of any individual to enroll in individual health insurance coverage based on genetic information (including information about a request for or receipt of genetic services by an individual or family member of such individual).

“(b) PROHIBITION ON GENETIC INFORMATION IN SETTING PREMIUM RATES.—A health insurance issuer offering health insurance coverage in the individual market shall not adjust premium or contribution amounts for an individual on the basis of genetic information concerning the individual or a family member of the individual (including information about a request for or receipt of genetic services by an individual or family member of such individual).

“(c) GENETIC TESTING.—

“(1) LIMITATION ON REQUESTING OR REQUIRING GENETIC TESTING.—A health insurance issuer offering health insurance coverage in the individual market shall not request or require an individual or a family member of such individual to undergo a genetic test.

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

“(A) limit the authority of a health care professional who is providing health care services with respect to an individual to request that such individual or a family member of such individual undergo a genetic test;

“(B) limit the authority of a health care professional who is employed by or affiliated with a health insurance issuer and who is providing health care services to an individual as part of a bona fide wellness program to notify such individual of the availability of a genetic test or to provide information to such individual regarding such genetic test; or

“(C) authorize or permit a health care professional to require that an individual undergo a genetic test.”.

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

“(b) SECRETARIAL ENFORCEMENT AUTHORITY.—The Secretary shall have the same authority in relation to enforcement of the provisions of this part with respect to issuers of health insurance coverage in the individual market in a State as the Secretary has under section 2722(b)(2), and section 2722(b)(3) with respect to violations of genetic nondiscrimination provisions, in relation to the enforcement of the provisions of part A with respect to issuers of health insurance coverage in the small group market in the State.”.

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

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

(2) by adding at the end the following:

“(D) ELECTION NOT APPLICABLE TO REQUIREMENTS CONCERNING GENETIC INFORMATION.—The election described in subparagraph (A) shall not be available with respect to the provisions of subsections (a)(1)(F) and (c) of section 2702 and the provisions of section 2702(b) to the extent that such provisions apply to genetic information (or information about a request for or the receipt of genetic services by an individual or a family member of such individual).”.

(d) REGULATIONS AND EFFECTIVE DATE.—

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

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

(A) with respect to group health plans, and health insurance coverage offered in connection with group health plans, for plan years beginning after the date that is 18 months after the date of enactment of this title; and

(B) with respect to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market after the date that is 18 months after the date of enactment of this title.

SEC. 103. AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.

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

(1) NO ENROLLMENT RESTRICTION FOR GENETIC SERVICES.—Section 9802(a)(1)(F) of the Internal Revenue Code of 1986 is amended by inserting before the period the following: “(including information about a request for or receipt of genetic services by an individual or family member of such individual)”.

(2) NO DISCRIMINATION IN GROUP PREMIUMS BASED ON GENETIC INFORMATION.—Section 9802(b) of the Internal Revenue Code of 1986 is amended—

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

(B) by adding at the end the following:

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

of this section, a group health plan shall not adjust premium or contribution amounts for a group on the basis of genetic information concerning an individual in the group or a family member of the individual (including information about a request for or receipt of genetic services by an individual or family member of such individual)."

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

"(d) GENETIC TESTING AND GENETIC SERVICES.—

"(1) LIMITATION ON REQUESTING OR REQUIRING GENETIC TESTING.—A group health plan shall not request or require an individual or a family member of such individual to undergo a genetic test.

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

"(A) limit the authority of a health care professional who is providing health care services with respect to an individual to request that such individual or a family member of such individual undergo a genetic test;

"(B) limit the authority of a health care professional who is employed by or affiliated with a group health plan and who is providing health care services to an individual as part of a bona fide wellness program to notify such individual of the availability of a genetic test or to provide information to such individual regarding such genetic test; or

"(C) authorize or permit a health care professional to require that an individual undergo a genetic test.

"(e) APPLICATION TO ALL PLANS.—The provisions of subsections (a)(1)(F), (b)(3), and (d) shall apply to group health plans and health insurance issuers without regard to section 9831(a)(2)."

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

"(6) FAMILY MEMBER.—The term 'family member' means with respect to an individual—

"(A) the spouse of the individual;

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

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

"(7) GENETIC SERVICES.—The term 'genetic services' means—

"(A) a genetic test;

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

"(C) genetic education.

"(8) GENETIC INFORMATION.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'genetic information' means information about—

"(i) an individual's genetic tests;

"(ii) the genetic tests of family members of the individual; or

"(iii) the occurrence of a disease or disorder in family members of the individual.

"(B) EXCLUSIONS.—The term 'genetic information' shall not include information about the sex or age of an individual.

"(9) GENETIC TEST.—

"(A) IN GENERAL.—The term 'genetic test' means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes.

"(B) EXCEPTIONS.—The term 'genetic test' does not mean—

"(i) an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or

"(ii) an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved."

(d) REGULATIONS AND EFFECTIVE DATE.—

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

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

#### SEC. 104. AMENDMENTS TO TITLE XVIII OF THE SOCIAL SECURITY ACT RELATING TO MEDIGAP.

(a) NONDISCRIMINATION.—

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

"(E)(i) An issuer of a medicare supplemental policy shall not deny or condition the issuance or effectiveness of the policy, and shall not discriminate in the pricing of the policy (including the adjustment of premium rates) of an eligible individual on the basis of genetic information concerning the individual (or information about a request for, or the receipt of, genetic services by such individual or family member of such individual).

"(ii) For purposes of clause (i), the terms 'family member', 'genetic services', and 'genetic information' shall have the meanings given such terms in subsection (v)."

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

(b) LIMITATIONS ON GENETIC TESTING.—

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

"(v) LIMITATIONS ON GENETIC TESTING.—

"(1) GENETIC TESTING.—

"(A) LIMITATION ON REQUESTING OR REQUIRING GENETIC TESTING.—An issuer of a medicare supplemental policy shall not request or require an individual or a family member of such individual to undergo a genetic test.

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

"(i) limit the authority of a health care professional who is providing health care services with respect to an individual to request that such individual or a family member of such individual undergo a genetic test;

"(ii) limit the authority of a health care professional who is employed by or affiliated with an issuer of a medicare supplemental policy and who is providing health care services to an individual as part of a bona fide wellness program to notify such individual of the availability of a genetic test or to provide information to such individual regarding such genetic test; or

"(iii) authorize or permit a health care professional to require that an individual undergo a genetic test.

"(2) DEFINITIONS.—In this subsection:

"(A) FAMILY MEMBER.—The term 'family member' means with respect to an individual—

"(i) the spouse of the individual;

"(ii) a dependent child of the individual, including a child who is born to or placed for adoption with the individual; or

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

"(B) GENETIC INFORMATION.—

"(i) IN GENERAL.—Except as provided in clause (ii), the term 'genetic information' means information about—

"(I) an individual's genetic tests;

"(II) the genetic tests of family members of the individual; or

"(III) the occurrence of a disease or disorder in family members of the individual.

"(ii) EXCLUSIONS.—The term 'genetic information' shall not include information about the sex or age of an individual.

"(C) GENETIC TEST.—

"(i) IN GENERAL.—The term 'genetic test' means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes.

"(ii) EXCEPTIONS.—The term 'genetic test' does not mean—

"(I) an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or

"(II) an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.

"(D) GENETIC SERVICES.—The term 'genetic services' means—

"(i) a genetic test;

"(ii) genetic counseling (such as obtaining, interpreting, or assessing genetic information); or

"(iii) genetic education.

"(E) ISSUER OF A MEDICARE SUPPLEMENTAL POLICY.—The term 'issuer of a medicare supplemental policy' includes a third-party administrator or other person acting for or on behalf of such issuer."

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

"(4) The issuer of the medicare supplemental policy complies with subsection (s)(2)(E) and subsection (v)."

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

(c) TRANSITION PROVISIONS.—

(1) IN GENERAL.—If the Secretary of Health and Human Services identifies a State as requiring a change to its statutes or regulations to conform its regulatory program to the changes made by this section, the State regulatory program shall not be considered to be out of compliance with the requirements of section 1882 of the Social Security Act due solely to failure to make such change until the date specified in paragraph (4).

(2) NAIC STANDARDS.—If, not later than June 30, 2004, the National Association of Insurance Commissioners (in this subsection referred to as the "NAIC") modifies its NAIC Model Regulation relating to section 1882 of the Social Security Act (referred to in such section as the 1991 NAIC Model Regulation, as subsequently modified) to conform to the amendments made by this section, such revised regulation incorporating the modifications shall be considered to be the applicable NAIC model regulation (including the revised NAIC model regulation and the 1991 NAIC Model Regulation) for the purposes of such section.

(3) SECRETARY STANDARDS.—If the NAIC does not make the modifications described in paragraph (2) within the period specified in such paragraph, the Secretary of Health and Human Services shall, not later than October 1, 2004, make the modifications described in such paragraph and such revised regulation incorporating the modifications shall be considered to be the appropriate regulation for the purposes of such section.

(4) DATE SPECIFIED.—

(A) IN GENERAL.—Subject to subparagraph (B), the date specified in this paragraph for a State is the earlier of—

(i) the date the State changes its statutes or regulations to conform its regulatory program to the changes made by this section, or

(ii) October 1, 2004.

(B) ADDITIONAL LEGISLATIVE ACTION REQUIRED.—In the case of a State which the Secretary identifies as—

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

(ii) having a legislature which is not scheduled to meet in 2004 in a legislative session in which such legislation may be considered, the date specified in this paragraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after July 1, 2004. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

#### SEC. 105. PRIVACY AND CONFIDENTIALITY.

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

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

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

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

(b) **COMPLIANCE WITH CERTAIN CONFIDENTIALITY STANDARDS WITH RESPECT TO GENETIC INFORMATION.**—

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

(2) **PROHIBITION ON UNDERWRITING AND PREMIUM RATING.**—Notwithstanding paragraph (1), a group health plan, a health insurance issuer, or issuer of a medicare supplemental policy shall not use or disclose genetic information (including information about a request for or a receipt of genetic services by an individual or family member of such individual) for purposes of underwriting, determinations of eligibility to enroll, premium rating, or the creation, renewal or replacement of a plan, contract or coverage for health insurance or health benefits.

(c) **PROHIBITION ON COLLECTION OF GENETIC INFORMATION.**—

(1) **IN GENERAL.**—A group health plan, health insurance issuer, or issuer of a medicare supplemental policy shall not request, require, or purchase genetic information (including information about a request for or a receipt of genetic services by an individual or family member of such individual) for purposes of underwriting, determinations of eligibility to enroll, premium rating, or the creation, renewal or replacement of a plan, contract or coverage for health insurance or health benefits.

(2) **LIMITATION RELATING TO THE COLLECTION OF GENETIC INFORMATION PRIOR TO ENROLLMENT.**—A group health plan, health insurance issuer, or issuer of a medicare supplemental policy shall not request, require, or purchase genetic information (including information about a request for or a receipt of genetic services by an individual or family member of such individual) concerning a participant, beneficiary, or enrollee prior to the enrollment, and in connection with such enrollment, of such individual under the plan, coverage, or policy.

(3) **INCIDENTAL COLLECTION.**—Where a group health plan, health insurance issuer, or issuer of a medicare supplemental policy obtains genetic information incidental to the requesting, requiring, or purchasing of other information concerning a participant, beneficiary, or enrollee, such request, requirement, or purchase shall not be considered a violation of this subsection if—

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

(B) any genetic information (including information about a request for or receipt of genetic

services) requested, required, or purchased is not used or disclosed in violation of subsection (b).

(d) **APPLICATION OF CONFIDENTIALITY STANDARDS.**—The provisions of subsections (b) and (c) shall not apply—

(1) to group health plans, health insurance issuers, or issuers of medicare supplemental policies that are not otherwise covered under the regulations promulgated by the Secretary of Health and Human Services under part C of title XI of the Social Security Act (42 U.S.C. 1320d et seq.) and section 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d-2 note); and

(2) to genetic information that is not considered to be individually-identifiable health information under the regulations promulgated by the Secretary of Health and Human Services under part C of title XI of the Social Security Act (42 U.S.C. 1320d et seq.) and section 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d-2 note).

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

(f) **PREEMPTION.**—

(1) **IN GENERAL.**—A provision or requirement under this section or a regulation promulgated under this section shall supersede any contrary provision of State law unless such provision of State law imposes requirements, standards, or implementation specifications that are more stringent than the requirements, standards, or implementation specifications imposed under this section or such regulations. No penalty, remedy, or cause of action to enforce such a State law that is more stringent shall be preempted by this section.

(2) **RULE OF CONSTRUCTION.**—Nothing in paragraph (1) shall be construed to establish a penalty, remedy, or cause of action under State law if such penalty, remedy, or cause of action is not otherwise available under such State law.

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

(h) **DEFINITIONS.**—In this section:

(1) **GENETIC INFORMATION; GENETIC SERVICES.**—The terms “family member”, “genetic information”, “genetic services”, and “genetic test” have the meanings given such terms in section 2791 of the Public Health Service Act (42 U.S.C. 300gg-91), as amended by this Act.

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

(3) **ISSUER OF A MEDICARE SUPPLEMENTAL POLICY.**—The term “issuer of a medicare supplemental policy” means an issuer described in section 1882 of the Social Security Act (42 insert 1395ss).

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

#### SEC. 106. ASSURING COORDINATION.

(a) **IN GENERAL.**—Except as provided in subsection (b), the Secretary of the Treasury, the Secretary of Health and Human Services, and the Secretary of Labor shall ensure, through the execution of an interagency memorandum of understanding among such Secretaries, that—

(1) regulations, rulings, and interpretations issued by such Secretaries relating to the same

matter over which two or more such Secretaries have responsibility under this title (and the amendments made by this title) are administered so as to have the same effect at all times; and

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

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

#### SEC. 107. REGULATIONS; EFFECTIVE DATE.

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

(b) **EFFECTIVE DATE.**—Except as provided in section 104, the amendments made by this title shall take effect on the date that is 18 months after the date of enactment of this Act.

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

#### SEC. 201. DEFINITIONS.

In this title:

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

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

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

(i) an employee (including an applicant), as defined in section 701(f) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(f));

(ii) a State employee (including an applicant) described in section 304(a) of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e-16c(a));

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

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

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

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

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

(ii) an entity employing a State employee described in section 304(a) of the Government Employee Rights Act of 1991;

(iii) an employing office, as defined in section 101 of the Congressional Accountability Act of 1995;

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

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

(C) **EMPLOYMENT AGENCY; LABOR ORGANIZATION.**—The terms “employment agency” and “labor organization” have the meanings given the terms in section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

(D) **MEMBER.**—The term “member”, with respect to a labor organization, includes an applicant for membership in a labor organization.

(3) **FAMILY MEMBER.**—The term “family member” means with respect to an individual—

(A) the spouse of the individual;

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

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

(4) **GENETIC INFORMATION.**—

(A) **IN GENERAL.**—Except as provided in subparagraph (B), the term “genetic information” means information about—

(i) an individual's genetic tests;  
 (ii) the genetic tests of family members of the individual; or  
 (iii) the occurrence of a disease or disorder in family members of the individual.

(B) EXCEPTIONS.—The term "genetic information" shall not include information about the sex or age of an individual.

(5) GENETIC MONITORING.—The term "genetic monitoring" means the periodic examination of employees to evaluate acquired modifications to their genetic material, such as chromosomal damage or evidence of increased occurrence of mutations, that may have developed in the course of employment due to exposure to toxic substances in the workplace, in order to identify, evaluate, and respond to the effects of or control adverse environmental exposures in the workplace.

(6) GENETIC SERVICES.—The term "genetic services" means—

(A) a genetic test;  
 (B) genetic counseling (such as obtaining, interpreting or assessing genetic information); or  
 (C) genetic education.

(7) GENETIC TEST.—

(A) IN GENERAL.—The term "genetic test" means the analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes.

(B) EXCEPTION.—The term "genetic test" does not mean an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes.

#### SEC. 202. EMPLOYER PRACTICES.

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

(1) to fail or refuse to hire or to discharge any employee, or otherwise to discriminate against any employee with respect to the compensation, terms, conditions, or privileges of employment of the employee, because of genetic information with respect to the employee (or information about a request for or the receipt of genetic services by such employee or family member of such employee); or

(2) to limit, segregate, or classify the employees of the employer in any way that would deprive or tend to deprive any employee of employment opportunities or otherwise adversely affect the status of the employee as an employee, because of genetic information with respect to the employee (or information about a request for or the receipt of genetic services by such employee or family member of such employee).

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

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

(2) where—

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

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

(C) only the employee (or family member if the family member is receiving genetic services) and the licensed health care professional or board certified genetic counselor involved in providing such services receive individually identifiable information concerning the results of such services; and

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

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

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

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

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

(B)(i) the employee provides prior, knowing, voluntary, and written authorization; or

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

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

(D) the monitoring is in compliance with—

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

(ii) State genetic monitoring regulations, in the case of a State that is implementing genetic monitoring regulations under the authority of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.); and

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

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

#### SEC. 203. EMPLOYMENT AGENCY PRACTICES.

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

(1) to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of genetic information with respect to the individual (or information about a request for or the receipt of genetic services by such individual or family member of such individual);

(2) to limit, segregate, or classify individuals or fail or refuse to refer for employment any individual in any way that would deprive or tend to deprive any individual of employment opportunities, or otherwise adversely affect the status of the individual as an employee, because of genetic information with respect to the individual (or information about a request for or the receipt of genetic services by such individual or family member of such individual); or

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

(b) ACQUISITION OF GENETIC INFORMATION.—It shall be an unlawful employment practice for an employment agency to request, require, or purchase genetic information with respect to an individual or a family member of the individual (or information about a request for the receipt of genetic services by such individual or a family member of such individual) except—

(1) where an employment agency inadvertently requests or requires family medical history of the individual or family member of the individual;

(2) where—

(A) health or genetic services are offered by the employment agency, including such services offered as part of a bona fide wellness program;

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

(C) only the individual (or family member if the family member is receiving genetic services) and the licensed health care professional or board certified genetic counselor involved in providing such services receive individually identifiable information concerning the results of such services; and

(D) any individually identifiable genetic information provided under subparagraph (C) in connection with the services provided under subparagraph (A) is only available for purposes of such services and shall not be disclosed to the employment agency except in aggregate terms that do not disclose the identity of specific individuals;

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

(4) where an employment agency purchases documents that are commercially and publicly available (including newspapers, magazines, periodicals, and books, but not including medical databases or court records) that include family medical history; or

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

(A) the employment agency provides written notice of the genetic monitoring to the individual;

(B)(i) the individual provides prior, knowing, voluntary, and written authorization; or

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

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

(D) the monitoring is in compliance with—

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

(ii) State genetic monitoring regulations, in the case of a State that is implementing genetic monitoring regulations under the authority of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.); and

(E) the employment agency, excluding any licensed health care professional or board certified genetic counselor that is involved in the genetic monitoring program, receives the results of the monitoring only in aggregate terms that do not disclose the identity of specific individuals;

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

#### SEC. 204. LABOR ORGANIZATION PRACTICES.

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

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

(2) to limit, segregate, or classify the members of the organization, or fail or refuse to refer for

employment any member, in any way that would deprive or tend to deprive any member of employment opportunities, or otherwise adversely affect the status of the member as an employee, because of genetic information with respect to the member (or information about a request for or the receipt of genetic services by such member or family member of such member); or

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

(b) **ACQUISITION OF GENETIC INFORMATION.**—It shall be an unlawful employment practice for a labor organization to request, require, or purchase genetic information with respect to a member or a family member of the member (or information about a request for the receipt of genetic services by such member or a family member of such member) except—

(1) where a labor organization inadvertently requests or requires family medical history of the member or family member of the member;

(2) where—

(A) health or genetic services are offered by the labor organization, including such services offered as part of a bona fide wellness program;

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

(C) only the member (or family member if the family member is receiving genetic services) and the licensed health care professional or board certified genetic counselor involved in providing such services receive individually identifiable information concerning the results of such services; and

(D) any individually identifiable genetic information provided under subparagraph (C) in connection with the services provided under subparagraph (A) is only available for purposes of such services and shall not be disclosed to the labor organization except in aggregate terms that do not disclose the identity of specific members;

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

(4) where a labor organization purchases documents that are commercially and publicly available (including newspapers, magazines, periodicals, and books, but not including medical databases or court records) that include family medical history; or

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

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

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

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

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

(D) the monitoring is in compliance with—

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

(ii) State genetic monitoring regulations, in the case of a State that is implementing genetic monitoring regulations under the authority of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.); and

(E) the labor organization, excluding any licensed health care professional or board certified genetic counselor that is involved in the genetic monitoring program, receives the results of the monitoring only in aggregate terms that do not disclose the identity of specific members;

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

#### SEC. 205. TRAINING PROGRAMS.

(a) **USE OF GENETIC INFORMATION.**—It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs—

(1) to discriminate against any individual because of genetic information with respect to the individual (or information about a request for or the receipt of genetic services by such individual or a family member of such individual) in admission to, or employment in, any program established to provide apprenticeship or other training or retraining;

(2) to limit, segregate, or classify the applicants for or participants in such apprenticeship or other training or retraining, or fail or refuse to refer for employment any individual, in any way that would deprive or tend to deprive any individual of employment opportunities, or otherwise adversely affect the status of the individual as an employee, because of genetic information with respect to the individual (or information about a request for or receipt of genetic services by such individual or family member of such individual); or

(3) to cause or attempt to cause an employer to discriminate against an applicant for or a participant in such apprenticeship or other training or retraining in violation of this title.

(b) **ACQUISITION OF GENETIC INFORMATION.**—It shall be an unlawful employment practice for an employer, labor organization, or joint labor-management committee described in subsection (a) to request, require, or purchase genetic information with respect to an individual or a family member of the individual (or information about a request for the receipt of genetic services by such individual or a family member of such individual) except—

(1) where the employer, labor organization, or joint labor-management committee inadvertently requests or requires family medical history of the individual or family member of the individual;

(2) where—

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

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

(C) only the individual (or family member if the family member is receiving genetic services) and the licensed health care professional or board certified genetic counselor involved in providing such services receive individually identifiable information concerning the results of such services;

(D) any individually identifiable genetic information provided under subparagraph (C) in connection with the services provided under subparagraph (A) is only available for purposes of such services and shall not be disclosed to the employer, labor organization, or joint labor-management committee except in aggregate terms that do not disclose the identity of specific individuals;

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

(4) where the employer, labor organization, or joint labor-management committee purchases documents that are commercially and publicly

available (including newspapers, magazines, periodicals, and books, but not including medical databases or court records) that include family medical history; or

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

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

(B)(i) the individual provides prior, knowing, voluntary, and written authorization; or

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

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

(D) the monitoring is in compliance with—

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

(ii) State genetic monitoring regulations, in the case of a State that is implementing genetic monitoring regulations under the authority of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.); and

(E) the employer, labor organization, or joint labor-management committee, excluding any licensed health care professional or board certified genetic counselor that is involved in the genetic monitoring program, receives the results of the monitoring only in aggregate terms that do not disclose the identity of specific individuals;

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

#### SEC. 206. CONFIDENTIALITY OF GENETIC INFORMATION.

(a) **TREATMENT OF INFORMATION AS PART OF CONFIDENTIAL MEDICAL RECORD.**—If an employer, employment agency, labor organization, or joint labor-management committee possesses genetic information about an employee or member (or information about a request for or receipt of genetic services by such employee or member or family member of such employee or member), such information shall be maintained on separate forms and in separate medical files and be treated as a confidential medical record of the employee or member.

(b) **LIMITATION ON DISCLOSURE.**—An employer, employment agency, labor organization, or joint labor-management committee shall not disclose genetic information concerning an employee or member (or information about a request for or receipt of genetic services by such employee or member or family member of such employee or member) except—

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

(2) to an occupational or other health researcher if the research is conducted in compliance with the regulations and protections provided for under part 46 of title 45, Code of Federal Regulations;

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

(A) the employer, employment agency, labor organization, or joint labor-management committee may disclose only the genetic information expressly authorized by such order; and

(B) if the court order was secured without the knowledge of the employee or member to whom the information refers, the employer, employment agency, labor organization, or joint labor-

management committee shall provide the employee or member with adequate notice to challenge the court order;

(4) to government officials who are investigating compliance with this title if the information is relevant to the investigation; or

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

#### SEC. 207. REMEDIES AND ENFORCEMENT.

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

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

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

(3) DAMAGES.—The powers, remedies, and procedures provided in section 1977A of the Revised Statutes (42 U.S.C. 1981a), including the limitations contained in subsection (b)(3) of such section 1977A, shall be powers, remedies, and procedures this title provides to the Commission, the Attorney General, or any person, alleging such a practice (not an employment practice specifically excluded from coverage under section 1977A(a)(1) of the Revised Statutes).

(b) EMPLOYEES COVERED BY GOVERNMENT EMPLOYEE RIGHTS ACT OF 1991.—

(1) IN GENERAL.—The powers, remedies, and procedures provided in sections 302 and 304 of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e-16b, 2000e-16c) to the Commission, or any person, alleging a violation of section 302(a)(1) of that Act (42 U.S.C. 2000e-16b(a)(1)) shall be the powers, remedies, and procedures this title provides to the Commission, or any person, respectively, alleging an unlawful employment practice in violation of this title against an employee described in section 201(2)(A)(ii), except as provided in paragraphs (2) and (3).

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

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

(c) EMPLOYEES COVERED BY CONGRESSIONAL ACCOUNTABILITY ACT OF 1995.—

(1) IN GENERAL.—The powers, remedies, and procedures provided in the Congressional Accountability Act of 1995 (2 U.S.C. 1301 et seq.) to the Board (as defined in section 101 of that Act (2 U.S.C. 1301)), or any person, alleging a violation of section 201(a)(1) of that Act (42 U.S.C. 1311(a)(1)) shall be the powers, remedies, and procedures this title provides to that Board, or any person, alleging an unlawful employment practice in violation of this title against an em-

ployee described in section 201(2)(A)(iii), except as provided in paragraphs (2) and (3).

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

(3) DAMAGES.—The powers, remedies, and procedures provided in section 1977A of the Revised Statutes (42 U.S.C. 1981a), including the limitations contained in subsection (b)(3) of such section 1977A, shall be powers, remedies, and procedures this title provides to that Board, or any person, alleging such a practice (not an employment practice specifically excluded from coverage under section 1977A(a)(1) of the Revised Statutes).

(4) OTHER APPLICABLE PROVISIONS.—With respect to a claim alleging a practice described in paragraph (1), title III of the Congressional Accountability Act of 1995 (2 U.S.C. 1381 et seq.) shall apply in the same manner as such title applies with respect to a claim alleging a violation of section 201(a)(1) of such Act (2 U.S.C. 1311(a)(1)).

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

(1) IN GENERAL.—The powers, remedies, and procedures provided in chapter 5 of title 3, United States Code, to the President, the Commission, the Merit Systems Protection Board, or any person, alleging a violation of section 411(a)(1) of that title, shall be the powers, remedies, and procedures this title provides to the President, the Commission, such Board, or any person, respectively, alleging an unlawful employment practice in violation of this title against an employee described in section 201(2)(A)(iv), except as provided in paragraphs (2) and (3).

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

(3) DAMAGES.—The powers, remedies, and procedures provided in section 1977A of the Revised Statutes (42 U.S.C. 1981a), including the limitations contained in subsection (b)(3) of such section 1977A, shall be powers, remedies, and procedures this title provides to the President, the Commission, such Board, or any person, alleging such a practice (not an employment practice specifically excluded from coverage under section 1977A(a)(1) of the Revised Statutes).

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

(1) IN GENERAL.—The powers, remedies, and procedures provided in section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16) to the Commission, the Attorney General, the Librarian of Congress, or any person, alleging a violation of that section shall be the powers, remedies, and procedures this title provides to the Commission, the Attorney General, the Librarian of Congress, or any person, respectively, alleging an unlawful employment practice in violation of this title against an employee or applicant described in section 201(2)(A)(v), except as provided in paragraphs (2) and (3).

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

(3) DAMAGES.—The powers, remedies, and procedures provided in section 1977A of the Revised Statutes (42 U.S.C. 1981a), including the limitations contained in subsection (b)(3) of such section 1977A, shall be powers, remedies, and procedures this title provides to the Commission, the Attorney General, the Librarian of Congress, or any person, alleging such a practice (not an em-

ployment practice specifically excluded from coverage under section 1977A(a)(1) of the Revised Statutes).

(f) DEFINITION.—In this section, the term "Commission" means the Equal Employment Opportunity Commission.

#### SEC. 208. DISPARATE IMPACT.

(a) GENERAL RULE.—Notwithstanding any other provision of this Act, "disparate impact", as that term is used in section 703(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-d(k)), on the basis of genetic information does not establish a cause of action under this Act.

(b) COMMISSION.—On the date that is 6 years after the date of enactment of this Act, there shall be established a commission, to be known as the Genetic Nondiscrimination Study Commission (referred to in this section as the "Commission") to review the developing science of genetics and to make recommendations to Congress regarding whether to provide a disparate impact cause of action under this Act.

(c) MEMBERSHIP.—

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

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

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

(C) 1 member shall be appointed by the Chairman of the Committee on Health, Education, Labor, and Pensions of the Senate;

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

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

(F) 1 member shall be appointed by the Minority Leader of the House of Representative;

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

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

(2) COMPENSATION AND EXPENSES.—The members of the Commission shall not receive compensation for the performance of services for the Commission, but shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(d) ADMINISTRATIVE PROVISIONS.—

(1) LOCATION.—The Commission shall be located in a facility maintained by the Equal Employment Opportunity Commission.

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

(3) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out the provisions of this section. Upon request of the Commission, the head of such department or agency shall furnish such information to the Commission.

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

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

(e) REPORT.—Not later than 1 year after all of the members are appointed to the Commission

under subsection (c)(1), the Commission shall submit to Congress a report that summarizes the findings of the Commission and makes such recommendations for legislation as are consistent with this Act.

(f) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the Equal Employment Opportunity Commission such sums as may be necessary to carry out this section.

**SEC. 209. CONSTRUCTION.**

Nothing in this title shall be construed to—

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

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

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

(3) limit the rights or protections of an individual under any other Federal or State statute that provides equal or greater protection to an individual than the rights or protections provided for under this title;

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

(5) limit or expand the protections, rights, or obligations of employees or employers under applicable workers' compensation laws;

(6) limit the authority of a Federal department or agency to conduct or sponsor occupational or other health research that is conducted in compliance with the regulations contained in part 46 of title 45, Code of Federal Regulations (or any corresponding or similar regulation or rule); and

(7) limit the statutory or regulatory authority of the Occupational Safety and Health Administration or the Mine Safety and Health Administration to promulgate or enforce workplace safety and health laws and regulations.

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

An employer, employment agency, labor organization, or joint labor-management committee shall not be considered to be in violation of this title based on the use, acquisition, or disclosure of medical information that is not genetic information about a manifested disease, disorder, or pathological condition of an employee or member, including a manifested disease, disorder, or pathological condition that has or may have a genetic basis.

**SEC. 211. REGULATIONS.**

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

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

There are authorized to be appropriated such sums as may be necessary to carry out this title (except for section 208).

**SEC. 213. EFFECTIVE DATE.**

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

**TITLE III—MISCELLANEOUS PROVISION**

**SEC. 301. SEVERABILITY.**

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of such provisions to any person or circumstance shall not be affected thereby.

The committee amendment in the nature of a substitute was agreed to.

The amendment (No. 1824) was agreed to.

(The amendment is printed in today's RECORD under "Text of Amendments.")

Mr. FRIST. Mr. President, this legislation and the unanimous consent that was just obtained signifies an important accomplishment of this body but an accomplishment that resulted after about 6 years of work. As with so much important legislation, I think we sometimes take for granted how much work it takes to get to a certain point. Then when we present the bill, debate the bill, and then pass the bill, we move very quickly on to other issues.

What the unanimous consent just said was that we will be voting on this Tuesday when we get back from recess; that all time for debate and discussion on this particular issue, which I should add over the last 6 years has been debated a lot on this floor, will have been exhausted.

For more than 6 years, Members of this body have worked on this issue. I have worked with Senator OLYMPIA SNOWE for about 5¼ years, along with Senators JEFFORDS, ENZI, GREGG, HAGEL, COLLINS, and DEWINE on this issue of genetic nondiscrimination. Today, with the invaluable contributions of Senators DASCHLE and KENNEDY, we bring to the Senate floor this solid, important, significant legislation that, if I had to summarize, I would say provides individuals, citizens, patients, with strong protections against the potential of genetic discrimination in health insurance.

I especially want to take this opportunity to commend the chairman of the Health, Education, Labor and Pensions Committee, Chairman JUDD GREGG, for his leadership on this issue. In large part, it is due to his passion and commitment to this issue, to the principle of fairness and of equity, which has driven this process forward.

I also commend President Bush for his dedication in ensuring strong protections against genetic discrimination and for bringing attention to this critical matter.

When we began work on this issue many years ago, we were looking ahead at what we anticipated, which was the anticipation of the decoding of the human genome. At that time, we looked to the future. We wanted to preempt potential problems. Yes, it has taken 6 years, but finally with passage a week from next Tuesday we can be satisfied that we accomplished that goal set out 6 years ago.

This decoding of the human genome, which is about 3 billion bits of information that we did not have 15 years ago that we have now, has been accomplished. In fact, it was this year that scientists, working in collaboration with the National Human Genome Research Institute at the National Institutes of Health, published a final draft documenting the sequence of the entire human genetic code.

The publication of this final draft occurred more than 2 years ahead of

schedule and almost 50 years to the day from the historic publication by Dr. James Watson and Dr. Francis Crick of DNAs double helix.

This dazzling accomplishment has begun to usher in a whole new era of medical understanding. It has already begun to expand our understanding of human development and health, as well as disease. For example, the discovery of disease genes holds great promise. Based on this discovery, scientists may be able to design drugs to treat specific genes and genetic defects. Organs and tissues may be specifically engineered for use in transplantation. Preventive care will be based in part on genetic testing.

This explosion of knowledge, these tremendous advances in science and technology, are also fraught with risk, which this legislation will minimize.

When I first joined Senator SNOWE in this effort several years ago, at that point in time almost a third, one out of three, of the women offered a test for breast cancer risk at the National Institutes of Health declined the test. The reason they gave at that time for declining the test was that the result might in some way be made available to an insurance company which would then use that data, that information, to discriminate against them in whether health insurance would be issued to them.

I think it is a tremendous example of the danger of having a threat of discrimination, preventing one from getting a test that might be useful to them. Thus, that example led me to strongly believe then, and I do now, that we must protect people from the threat of genetic information in any way being used against them. That is a practical responsibility. It is a moral responsibility and it is one with this legislation that this body speaks to directly.

Simply stated, if unchecked, the fear of genetic discrimination would have the potential of keeping people from participating in very useful research studies. It had the potential for keeping people from taking advantage of new genetic technologies, and it had the potential of keeping an individual from having the opportunity to obtain information that demonstrated that they are not at risk for a potential genetically determined disease.

The fear of genetic discrimination has the potential to prevent citizens from making informed health decisions for themselves or their loved ones.

Congress, of course, has a rich history in battling against discrimination, most notably through the landmark 1964 Civil Rights Act. We think also of the 1990 Americans With Disabilities Act and the Health Insurance Portability and Accountability Act. The legislation before us now extends those very same protections to citizens who have genetic markers, a move that, ultimately, I believe, through this legislation, will allow us to save lives.

Genetic research, this unraveling of the genetic code, genetic testing will undoubtedly unleash tremendous advances to the benefit of mankind—thrilling advances, possible cures to illnesses today that seem vexing, that we do not fully understand. The potential medical advances from our knowledge of the human genome will be more dramatic than any of the advances that I had the opportunity to directly participate in over 20 years in the practice of medicine—just from this single unraveling of the genetic code.

As we greet the future, as we look at new technology, this is just one example of this body acting proactively, acting preemptively, so that such potential use in a discriminatory fashion of medical advances is kept from hurting the American people. We must take care to protect our body politic, and this legislation does just that. I am pleased by the progress we have made thus far, and I do congratulate each of my colleagues on their dedication to this issue over the last several years.

This legislation stands squarely on our time-tested civil rights laws establishing comprehensive, equitable, fair, consistent, and reasonable protections. I strongly support this bill, and I look forward to its swift passage when we vote on Tuesday, following our recess.

Mr. GREGG. Mr. President, this year we celebrated the 50 year anniversary of the now fabled discovery by Watson and Crick of the double helix. And this year the scientists at the NIH Human Genome Project completed the sequencing of human DNA.

These are major historical developments that will permanently change the course of biological science. The color of our eyes and the treatment of disease are now understood through the lens of genetics. As the science has progressed, so too have reservations with what we will do with this new information we are uncovering. Unlocking our genetic code unleashes new power. And power produces new responsibilities in protecting the privacy of our genetic information and protecting it from misuse.

Scientific advances in field of genetics hold great promise for medical prevention of new treatments and therapies. However, because our public policies lag behind the science, the promise of the Human Genome Project is going unfulfilled. Individuals are afraid to get genetic tests or seek genetic counseling out of fear that they will lose their health insurance or face discrimination in their employment.

After 6 years, numerous hearings, and hours of deliberation, I am pleased the Senate is finally taking up this important legislation, which was unanimously reported out of the Health, Education, Labor, and Pensions Committee on May 21, 2003. I am also pleased that the first civil rights legislation adopted under my chairmanship deals with an issue of truly 21st century concerns. This is the first civil rights act of the 21st century.

Genetic discrimination is an issue that affect all Americans. Everyone has genes. Everyone has hereditary medical traits. It's a non-partisan issue. This is reflected in the fact that this legislation is truly a bipartisan product. For more than a year, the HELP Committee has worked hard to marry together two major pieces of legislation—one sponsored by Senators SNOWE/FRIST/JEFFORDS and the other sponsored Senators DASCHLE and KENNEDY.

This legislation established in Federal law basic legal protections that prohibit discrimination in health insurance or employment based on genetic information.

A key component of the legislation is its privacy provisions. Although current law already contains medical privacy rules covering genetic information, this legislation addresses some additional concerns and closes loopholes that are unique to genetics. For instance, it protects the privacy of genetic information at work and prohibits the use of genetic information in health insurance underwriting.

This bill prohibits an employer from making employment decisions—hiring, firing, etc.—based on genetic information, or even that fact than an individual or family member requested or received genetic services.

This bill prohibits health insurance plans from denying eligibility or enrollment in the health plan based on genetic information. And it prohibits health insurance plans from charging higher premiums based on an individual's—or his or her family member's—genetic information.

Most importantly, the legislation recognizes that all individuals, whether they are healthy or sick, and all medical information, whether genetic or otherwise, should be afforded the same protections under law.

While genetic discrimination may not be widespread at this point in time, this legislation ensures that discriminatory practices will never become common practice. From the past we have learned that employees, employers, insurers and others all work best together when the rules are clear and opportunities for personal achievement and health are available. This legislation tells everyone what is expected of them and avoids the trip wires and uncertainty of some of our existing laws.

Any concerns about new regulations on employers or health plans are far outweighed by the benefits of scientific advances that will further revolutionize the medical field. With no silver bullet solution in sight to cure what ails our expensive and troubled health care system, I believe all stakeholders will welcome reasonable legislation that fosters medical advances that can lead to prevention and cure disease.

It is my hope that the bipartisan spirit that brought the parties together to craft this historic legislation will continue as we seek to realize the full potential of the human genome project.

The PRESIDING OFFICER. Without objection, S. 1053 is considered read a third time.

Mr. FRIST. Mr. President, I yield back all time on both sides, and I ask the bill be set aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

---

## EXECUTIVE SESSION

---

### EXECUTIVE CALENDAR

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate immediately proceed to executive session to consider the following nominations on today's Executive Calendar, Calendar Nos. 388 and 389. I further ask unanimous consent the nominations be confirmed, the motions to reconsider be laid upon the table, the President be immediately notified of the Senate's action, and the Senate then return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations considered and confirmed are as follows:

#### ARMY

The following named officer for appointment as Vice Chief of Staff, United States Army, and appointment to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., sections 601 and 3034:

*To be general*

Lt. Gen. George W. Casey, Jr., 1204.

#### NAVY

The following named officer for appointment in the United States Navy to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

*To be vice admiral*

Rear Adm. David C. Nichols, Jr., 5011.

---

## LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

---

### AUTHORIZING REGULATIONS RELATING TO THE USE OF OFFICIAL EQUIPMENT

Mr. FRIST. I ask unanimous consent the Senate proceed to the immediate consideration of S. Res. 238, which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 238) authorizing regulations relating to the use of official equipment.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. I ask unanimous consent the resolution be agreed to, the motion to reconsider be laid on the table, and any statements relating to this matter be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.