Participation in music brings countless benefits to every individual throughout life. The benefits may be psychological, spiritual or physical. I ask my colleagues to support this resolution and support the next generation of music lovers.

Mr. Speaker, I reserve the balance of my time.

Mr. WILSON of South Carolina. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today in support of House Concurrent Resolution 121, which highlights the benefits and importance of school-based music education. I would like to thank the gentleman from Tennessee (Mr. COOPER) and the gentleman from Nevada (Mr. PORTER) for their leadership on this issue and for introducing this resolution we are considering today.

Research has shown that students' involvement in their school music program is crucial to a complete education. Musical study develops critical thinking and self-discipline skills and improves a child's early cognitive development, basic math and reading abilities, self-esteem, SAT scores, ability to work in teams, spatial reasoning skills, and school attendance.

In an analysis by the U.S. Department of Education, data on more than 25,000 secondary school students, researchers found that students who report consistent high levels of involvement in instrumental music over the middle and high school years showed significantly higher levels of mathematics proficiency by grade 12 regardless of a student's socioeconomic status.

A 1999 report by the Texas Commission on Drug and Alcohol Abuse found that individuals who participated in band or orchestra reported the lowest levels of current and lifelong use of tobacco, alcohol and illicit drugs. So it is not surprising that children involved with music education are more likely to graduate from high school and attend college and are less likely to be involved with gangs and substance abuse.

In fact, many colleges and universities view participation in the arts and music as a valuable experience that broaden students' understanding and appreciation of the world around them.

For these reasons, I support H. Con. Res. 121. The resolution states it is the sense of Congress that music education grounded in rigorous instruction is an important component of a well-rounded academic curriculum, and should be available to every student in every school.

Music education is important to our children. It can broaden and strengthen their education and improve their lives. I join my colleagues in commending music educators and organizations across the country for the key roles they play in helping our students succeed in school and throughout life.

As former President Gerald Ford said, ''Music education opens the doors that help children pass from school into the world around them, a world of work, culture, intellectual activity and human involvement. The future of our Nation depends on providing our children with a complete education that includes music.''

I urge my colleagues to support House Con. Res. 121 and music education in our schools.

Mr. Speaker, I yield back the balance of my time.

Ms. CLARKE. Mr. Speaker, I am pleased to yield such time as he may consume to the gentleman from Tennessee (Mr. COOPER), the sponsor of the resolution.

Mr. COOPER. Mr. Speaker, I thank the gentlewoman.

I thank my colleagues for supporting this effort to highlight the importance of music education in our schools.

A lot of folks who have had the privilege of a musical education take it for granted, but 30 million or more of our children across this country every day are being deprived of that chance to not only experience the joy of music but, as my colleagues have mentioned, the increased enhanced learning abilities that music offers, and also the ability of music to deter people from gangs and drugs and other undesirable activities.

Music education is a very important part of our education. For anyone who has seen the movie ''Mr. Holland's Opus'' featuring Richard Dreyfuss, that was a wonderful film demonstration of the importance of music in the lives of that particular high school. But it is true of every high school and every middle school and every elementary school across our country.

Whether it is band or orchestra, or whether it is students on their own learning the guitar or other instruments, it is a wonderful way to not only enjoy life but to enhance your skills.

Mr. Speaker, I represent Nashville, Tennessee, which is Music City U.S.A. We have some of the most talented and creative musicians on the planet, and they happen to choose to live in our wonderful city.

You can't tell it by driving down the streets, but there are some 3,000 private recording studios in the basements and attics of people's homes as they put their music and their thoughts on tape for the pleasure and enjoyment and the education of the world.

Mr. Speaker, I appreciate your help in allowing this measure to be brought to the floor. It has passed the House on two previous Congresses. We are hoping that this time the Senate will also see fit to do the right thing and pass this legislation.

Ms. CLARKE. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman from New York (Ms. CLARKE) that the House suspend the rules and agree to the concurrent resolution, H. Con. Res. 121.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

GENETIC INFORMATION NONDISCRIMINATION ACT OF 2007

Mr. GEORGE MILLER of California. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 493) to prohibit discrimination on the basis of genetic information with respect to health insurance and employment, as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 493

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Genetic Information Nondiscrimination Act of 2007''.

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

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

TITLE I—GENETIC NONDISCRIMINATION IN HEALTH INSURANCE

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

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

Sec. 201. Definitions.
Sec. 202. Employer practices.
Sec. 203. Employment agency practices.
Sec. 204. Labor organization practices.
Sec. 205. Training programs.
Sec. 206. Confidentiality of genetic information.
Sec. 207. Remedies and enforcement.
Sec. 208. Disparate impact.
Sec. 209. Construction.
Sec. 210. Medical information that is not genetic information.
Sec. 211. Regulations.
Sec. 212. Authorization of appropriations.
Sec. 213. Effective date.

TITLE III—MISCELLANEOUS PROVISIONS

Sec. 301. Guarantee agency collection retention.
Sec. 302. Severability.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Deciphering the sequence of the human genome and other advances in genetics open major new opportunities for medical progress. New knowledge about the genetic basis of illness will allow for earlier detection of illnesses, often before symptoms have begun. Genetic testing can allow individuals to take steps to reduce the likelihood that they will contract a particular disorder. New knowledge about genetics may allow for the development of better therapies that are more effective against disease or have fewer side effects than current treatments. These

advances give rise to the potential misuse of genetic information to discriminate in health insurance and employment.

(2) The early science of genetics became the basis of State laws that provided for the sterilization of persons having presumed genetic ''defects'' such as mental retardation, mental disease, epilepsy, blindness, and hearing loss, among other conditions. The first sterilization law was enacted in the State of Indiana in 1907. By 1981, a majority of States adopted sterilization laws to ''correct'' apparent genetic traits or tendencies. Many of these State laws have since been repealed, and many have been modified to include essential constitutional requirements of due process and equal protection. However, the current explosion in the science of genetics, and the history of sterilization laws by the States based on early genetic science, compels Congressional action in this area.

(3) Although genes are facially neutral markers, many genetic conditions and disorders are associated with particular racial and ethnic groups and gender. Because some genetic traits are most prevalent in particular groups, members of a particular group may be stigmatized or discriminated against as a result of that genetic information. This form of discrimination was evident in the 1970s, which saw the advent of programs to screen and identify carriers of sickle cell anemia, a disease which afflicts African-Americans. Once again, State legislatures began to enact discriminatory laws in the area, and in the early 1970s began mandating genetic screening of all African Americans for sickle cell anemia, leading to discrimination and unnecessary fear. To alleviate some of this stigma, Congress in 1972 passed the National Sickle Cell Anemia Control Act, which withholds Federal funding from States unless sickle cell testing is voluntary.

(4) Congress has been informed of examples of genetic discrimination in the workplace. These include the use of pre-employment genetic screening at Lawrence Berkeley Laboratory, which led to a court decision in favor of the employees in that case Norman-Bloodsaw v. Lawrence Berkeley Laboratory (135 F.3d 1260, 1269 (9th Cir. 1998)). Congress clearly has a compelling public interest in relieving the fear of discrimination and in prohibiting its actual practice in employment and health insurance.

(5) Federal law addressing genetic discrimination in health insurance and employment is incomplete in both the scope and depth of its protections. Moreover, while many States have enacted some type of genetic non-discrimination law, these laws vary widely with respect to their approach, application, and level of protection. Congress has collected substantial evidence that the American public and the medical community find the existing patchwork of State and Federal laws to be confusing and inadequate to protect them from discrimination. Therefore Federal legislation establishing a national and uniform basic standard is necessary to fully protect the public from discrimination and allay their concerns about the potential for discrimination, thereby allowing individuals to take advantage of genetic testing, technologies, research, and new therapies.

TITLE I—GENETIC NONDISCRIMINATION IN HEALTH INSURANCE

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

(a) 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—

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

(2) by adding at the end the following:

''(3) NO GROUP-BASED DISCRIMINATION ON BASIS OF GENETIC INFORMATION.—For purposes of this section, a group health plan, and a health insurance issuer offering group health insurance coverage in connection with a group health plan, may not adjust premium or contribution amounts for the group covered under such plan on the basis of genetic information.''.

(b) LIMITATIONS ON GENETIC TESTING; PROHIBITION ON COLLECTION OF GENETIC INFORMATION; APPLICATION TO ALL PLANS.—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, and 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.—Paragraph (1) shall not be construed to limit the authority of a health care professional who is providing health care services to an individual to request that such individual undergo a genetic test.

''(3) RULE OF CONSTRUCTION REGARDING PAYMENT.—

''(A) IN GENERAL.—Nothing in paragraph (1) shall be construed to preclude a group health plan, or a health insurance issuer offering health insurance coverage in connection with a group health plan, from obtaining and using the results of a genetic test in making a determination regarding payment (as such term is defined for the purposes of applying the regulations promulgated by the Secretary of Health and Human Services under part C of title XI of the Social Security Act and section 264 of the Health Insurance Portability and Accountability Act of 1996, as may be revised from time to time) consistent with subsection (a).

''(B) LIMITATION.—For purposes of subparagraph (A), a group health plan, or a health insurance issuer offering health insurance coverage in connection with a group health plan, may request only the minimum amount of information necessary to accomplish the intended purpose.

''(4) RESEARCH EXCEPTION.—Notwithstanding paragraph (1), a group health plan, or a health insurance issuer offering health insurance coverage in connection with a group health plan, may request, but not require, that a participant or beneficiary undergo a genetic test if each of the following conditions is met:

''(A) The request is made, in writing, pursuant to research that complies with part 46 of title 45, Code of Federal Regulations, or equivalent Federal regulations, and any applicable State or local law or regulations for the protection of human subjects in research.

''(B) The plan or issuer clearly indicates to each participant or beneficiary, or in the case of a minor child, to the legal guardian of such beneficiary, to whom the request is made that—

''(i) compliance with the request is voluntary; and

''(ii) non-compliance will have no effect on enrollment status or premium or contribution amounts.

''(C) No genetic information collected or acquired under this paragraph shall be used for underwriting purposes.

''(D) The plan or issuer notifies the Secretary in writing that the plan or issuer is conducting activities pursuant to the exception provided for under this paragraph, including a description of the activities conducted.

''(E) The plan or issuer complies with such other conditions as the Secretary may by regulation require for activities conducted under this paragraph.

''(d) PROHIBITION ON COLLECTION OF GENETIC INFORMATION.—

''(1) IN GENERAL.—A group health plan, and a health insurance issuer offering health insurance coverage in connection with a group health plan, shall not request, require, or purchase genetic information for underwriting purposes (as defined in section 733).

''(2) PROHIBITION ON COLLECTION OF GENETIC INFORMATION PRIOR TO ENROLLMENT.—A group health plan, and a health insurance issuer offering health insurance coverage in connection with a group health plan, shall not request, require, or purchase genetic information with respect to any individual prior to such individual's enrollment under the plan or coverage in connection with such enrollment.

''(3) INCIDENTAL COLLECTION.—If a group health plan, or a health insurance issuer offering health insurance coverage in connection with a group health plan, obtains genetic information incidental to the requesting, requiring, or purchasing of other information concerning any individual, such request, requirement, or purchase shall not be considered a violation of paragraph (2) if such request, requirement, or purchase is not in violation of paragraph (1).

''(e) APPLICATION TO ALL PLANS.—The provisions of subsections (a)(1)(F), (b)(3), (c), and (d), and subsection (b)(1) and section 701 with respect to genetic information, shall apply to group health plans and health insurance issuers without regard to section 732(a).''.

(c) APPLICATION TO GENETIC INFORMATION OF A FETUS OR EMBRYO.—Such section is further amended by adding at the end the following:

''(f) GENETIC INFORMATION OF A FETUS OR EMBRYO.—Any reference in this part to genetic information concerning an individual or family member of an individual shall—

''(1) with respect to such an individual or family member of an individual who is a pregnant woman, include genetic information of any fetus carried by such pregnant woman; and

''(2) with respect to an individual or family member utilizing an assisted reproductive technology, include genetic information of any embryo legally held by the individual or family member.''.

(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) a dependent (as such term is used for purposes of section 701(f)(2)) of such individual, and

''(B) any other individual who is a first-degree, second-degree, third-degree, or fourth-degree relative of such individual or of an individual described in subparagraph (A).

''(6) GENETIC INFORMATION.—

''(A) IN GENERAL.—The term 'genetic information' means, with respect to any individual, information about—

''(i) such individual's genetic tests,

''(ii) the genetic tests of family members of such individual, and

''(iii) subject to subparagraph (D), the manifestation of a disease or disorder in family members of such individual.

''(B) INCLUSION OF GENETIC SERVICES.—Such term includes, with respect to any individual, any request for, or receipt of, genetic services (including genetic services received

pursuant to participation in clinical research) by such individual or any family member of such individual.

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

''(D) APPLICATION TO FAMILY MEMBERS COVERED UNDER SAME PLAN.—Information described in clause (iii) of subparagraph (A) shall not be treated as genetic information to the extent that such information is taken into account only with respect to the individual in which such disease or disorder is manifested and not as genetic information with respect to any other 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 (including obtaining, interpreting, or assessing genetic information); or

''(C) genetic education.

''(9) UNDERWRITING PURPOSES.—The term 'underwriting purposes' means, with respect to any group health plan, or health insurance coverage offered in connection with a group health plan—

''(A) rules for, or determination of, eligibility (including enrollment and continued eligibility) for benefits under the plan or coverage;

''(B) the computation of premium or contribution amounts under the plan or coverage;

''(C) the application of any pre-existing condition exclusion under the plan or coverage; and

''(D) other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits.''.

(e) ERISA ENFORCEMENT.—Section 502 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132) is amended—

(1) in subsection (a)(6), by striking ''(7), or (8)'' and inserting ''(7), (8), or (9)''; and

(2) in subsection (c), by redesignating paragraph (9) as paragraph (10), and by inserting after paragraph (8) the following new paragraph:

''(9) SECRETARIAL ENFORCEMENT AUTHORITY RELATING TO USE OF GENETIC INFORMATION.—

''(A) GENERAL RULE.—The Secretary may impose a penalty against any plan sponsor of a group health plan, or any health insurance issuer offering health insurance coverage in connection with the plan, for any failure by such sponsor or issuer to meet the requirements of subsection (a)(1)(F), (b)(3), (c), or (d) of section 702 or section 701 or 702(b)(1) with respect to genetic information, in connection with the plan.

''(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 participant or beneficiary 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 the 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 a participant or beneficiary—

''(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 participant or beneficiary 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 plan sponsor (or predecessor plan sponsor) 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.

''(F) DEFINITIONS.—Terms used in this paragraph which are defined in section 733 shall have the meanings provided such terms in such section.''.

(f) REGULATIONS AND EFFECTIVE DATE.—

(1) REGULATIONS.—The Secretary of Labor shall issue final regulations not later than 1 year after the date of enactment of this Act 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 Act.

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

(a) AMENDMENTS RELATING TO THE GROUP MARKET.—

(1) 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—

(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 GROUP-BASED DISCRIMINATION ON BASIS OF GENETIC INFORMATION.—For purposes of this section, a group health plan, and health insurance issuer offering group health insurance coverage in connection with a group health plan, may not adjust premium or contribution amounts for the group covered under such plan on the basis of genetic information.''.

(2) LIMITATIONS ON GENETIC TESTING; PROHIBITION ON COLLECTION OF GENETIC INFORMATION; APPLICATION TO ALL PLANS.—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, and 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.—Paragraph (1) shall not be construed to limit the authority of a health care professional who is providing health care services to an individual to request that such individual undergo a genetic test.

''(3) RULE OF CONSTRUCTION REGARDING PAYMENT.—

''(A) IN GENERAL.—Nothing in paragraph (1) shall be construed to preclude a group health plan, or a health insurance issuer offering health insurance coverage in connection with a group health plan, from obtaining and using the results of a genetic test in making a determination regarding payment (as such term is defined for the purposes of applying the regulations promulgated by the Secretary under part C of title XI of the Social Security Act and section 264 of the Health Insurance Portability and Accountability Act of 1996, as may be revised from time to time) consistent with subsection (a).

''(B) LIMITATION.—For purposes of subparagraph (A), a group health plan, or a health insurance issuer offering health insurance coverage in connection with a group health plan, may request only the minimum amount of information necessary to accomplish the intended purpose.

''(4) RESEARCH EXCEPTION.—Notwithstanding paragraph (1), a group health plan, or a health insurance issuer offering health insurance coverage in connection with a group health plan, may request, but not require, that a participant or beneficiary undergo a genetic test if each of the following conditions is met:

''(A) The request is made pursuant to research that complies with part 46 of title 45, Code of Federal Regulations, or equivalent Federal regulations, and any applicable State or local law or regulations for the protection of human subjects in research.

''(B) The plan or issuer clearly indicates to each participant or beneficiary, or in the case of a minor child, to the legal guardian of such beneficiary, to whom the request is made that—

''(i) compliance with the request is voluntary; and

''(ii) non-compliance will have no effect on enrollment status or premium or contribution amounts.

''(C) No genetic information collected or acquired under this paragraph shall be used for underwriting purposes.

''(D) The plan or issuer notifies the Secretary in writing that the plan or issuer is

conducting activities pursuant to the exception provided for under this paragraph, including a description of the activities conducted.

''(E) The plan or issuer complies with such other conditions as the Secretary may by regulation require for activities conducted under this paragraph.

''(d) PROHIBITION ON COLLECTION OF GENETIC INFORMATION.—

''(1) IN GENERAL.—A group health plan, and a health insurance issuer offering health insurance coverage in connection with a group health plan, shall not request, require, or purchase genetic information for underwriting purposes (as defined in section 2791).

''(2) PROHIBITION ON COLLECTION OF GENETIC INFORMATION PRIOR TO ENROLLMENT.—A group health plan, and a health insurance issuer offering health insurance coverage in connection with a group health plan, shall not request, require, or purchase genetic information with respect to any individual prior to such individual's enrollment under the plan or coverage in connection with such enrollment.

''(3) INCIDENTAL COLLECTION.—If a group health plan, or a health insurance issuer offering health insurance coverage in connection with a group health plan, obtains genetic information incidental to the requesting, requiring, or purchasing of other information concerning any individual, such request, requirement, or purchase shall not be considered a violation of paragraph (2) if such request, requirement, or purchase is not in violation of paragraph (1).

''(e) APPLICATION TO ALL PLANS.—The provisions of subsections (a)(1)(F), (b)(3), (c) , and (d) and subsection (b)(1) and section 2701 with respect to genetic information, shall apply to group health plans and health insurance issuers without regard to section 2721(a).''.

(3) APPLICATION TO GENETIC INFORMATION OF A FETUS OR EMBRYO.—Such section is further amended by adding at the end the following:

''(f) GENETIC INFORMATION OF A FETUS OR EMBRYO.—Any reference in this part to genetic information concerning an individual or family member of an individual shall—

''(1) with respect to such an individual or family member of an individual who is a pregnant woman, include genetic information of any fetus carried by such pregnant woman; and

''(2) with respect to an individual or family member utilizing an assisted reproductive technology, include genetic information of any embryo legally held by the individual or family member.''.

(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 any individual—

''(A) a dependent (as such term is used for purposes of section 2701(f)(2)) of such individual; and

''(B) any other individual who is a first-degree, second-degree, third-degree, or fourth-degree relative of such individual or of an individual described in subparagraph (A).

''(16) GENETIC INFORMATION.—

''(A) IN GENERAL.—The term 'genetic information' means, with respect to any individual, information about—

''(i) such individual's genetic tests,

''(ii) the genetic tests of family members of such individual, and

''(iii) subject to subparagraph (D), the manifestation of a disease or disorder in family members of such individual.

''(B) INCLUSION OF GENETIC SERVICES.—Such term includes, with respect to any individual, any request for, or receipt of, genetic services (including genetic services received pursuant to participation in clinical research) by such individual or any family member of such individual.

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

''(D) APPLICATION TO FAMILY MEMBERS COVERED UNDER SAME PLAN.—Information described in clause (iii) of subparagraph (A) shall not be treated as genetic information to the extent that such information is taken into account only with respect to the individual in which such disease or disorder is manifested and not as genetic information with respect to any other 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 (including obtaining, interpreting, or assessing genetic information); or

''(C) genetic education.

''(19) UNDERWRITING PURPOSES.—The term 'underwriting purposes' means, with respect to any group health plan, or health insurance coverage offered in connection with a group health plan—

''(A) rules for, or determination of, eligibility (including enrollment and continued eligibility) for benefits under the plan or coverage;

''(B) the computation of premium or contribution amounts under the plan or coverage;

''(C) the application of any pre-existing condition exclusion under the plan or coverage; and

''(D) other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits.''.

(5) REMEDIES AND ENFORCEMENT.—Section 2722(b) of the Public Health Service Act (42 U.S.C. 300gg–22(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 succeeding subparagraphs of this paragraph 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), (c), or (d) of section 2702 or section 2701 or 2702(b)(1) with respect to genetic information in connection with the plan.

''(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 participant or beneficiary 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 the 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.''.

(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.

''(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.

''(c) PROHIBITION ON GENETIC INFORMATION AS PREEXISTING CONDITION.—A health insurance issuer offering health insurance coverage in the individual market may not, on the basis of genetic information, impose any preexisting condition exclusion (as defined in section 2701(b)(1)(A)) with respect to such coverage.

''(d) 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.—Paragraph (1) shall not be construed to limit the authority of a health care professional who is providing health care services to an individual to request that such individual undergo a genetic test.

''(3) RULE OF CONSTRUCTION REGARDING PAYMENT.—

''(A) IN GENERAL.—Nothing in paragraph (1) shall be construed to preclude a health insurance issuer offering health insurance coverage in the individual market from obtaining and using the results of a genetic test in making a determination regarding payment (as such term is defined for the purposes of applying the regulations promulgated by the Secretary under part C of title XI of the Social Security Act and section 264 of the Health Insurance Portability and Accountability Act of 1996, as may be revised from time to time) consistent with subsection (a) and (c).

''(B) LIMITATION.—For purposes of subparagraph (A), a health insurance issuer offering health insurance coverage in the individual market may request only the minimum amount of information necessary to accomplish the intended purpose.

''(4) RESEARCH EXCEPTION.—Notwithstanding paragraph (1), a health insurance issuer offering health insurance coverage in the individual market may request, but not require, that an individual or a family member of such individual undergo a genetic test if each of the following conditions is met:

''(A) The request is made pursuant to research that complies with part 46 of title 45, Code of Federal Regulations, or equivalent Federal regulations, and any applicable State or local law or regulations for the protection of human subjects in research.

''(B) The issuer clearly indicates to each individual, or in the case of a minor child, to the legal guardian of such child, to whom the request is made that—

''(i) compliance with the request is voluntary; and

''(ii) non-compliance will have no effect on enrollment status or premium or contribution amounts.

''(C) No genetic information collected or acquired under this paragraph shall be used for underwriting purposes.

''(D) The issuer notifies the Secretary in writing that the issuer is conducting activities pursuant to the exception provided for under this paragraph, including a description of the activities conducted.

''(E) The issuer complies with such other conditions as the Secretary may by regulation require for activities conducted under this paragraph.

''(e) PROHIBITION ON COLLECTION OF GENETIC INFORMATION.—

''(1) IN GENERAL.—A health insurance issuer offering health insurance coverage in the individual market shall not request, require, or purchase genetic information for underwriting purposes (as defined in section 2791).

''(2) PROHIBITION ON COLLECTION OF GENETIC INFORMATION PRIOR TO ENROLLMENT.—A health insurance issuer offering health insurance coverage in the individual market shall not request, require, or purchase genetic information with respect to any individual prior to such individual's enrollment under the plan in connection with such enrollment.

''(3) INCIDENTAL COLLECTION.—If a health insurance issuer offering health insurance coverage in the individual market obtains genetic information incidental to the requesting, requiring, or purchasing of other information concerning any individual, such request, requirement, or purchase shall not be considered a violation of paragraph (2) if such request, requirement, or purchase is not in violation of paragraph (1).

''(f) GENETIC INFORMATION OF A FETUS OR EMBRYO.—Any reference in this part to genetic information concerning an individual or family member of an individual shall—

''(1) with respect to such an individual or family member of an individual who is a pregnant woman, include genetic information of any fetus carried by such pregnant woman; and

''(2) with respect to an individual or family member utilizing an assisted reproductive technology, include genetic information of any embryo legally held by the individual or family member.''.

(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), (b)(3), (c), and (d) of section 2702 and the provisions of sections 2701 and 2702(b) to the extent that such provisions apply to genetic information.''.

(d) REGULATIONS AND EFFECTIVE DATE.—

(1) REGULATIONS.—Not later than 1 year after the date of enactment of this Act, the Secretary of Health and Human Services shall issue final regulations 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 Act; 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 Act.

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

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

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

(2) by adding at the end the following:

''(3) NO GROUP-BASED DISCRIMINATION ON BASIS OF GENETIC INFORMATION.—For purposes of this section, a group health plan may not adjust premium or contribution amounts for the group covered under such plan on the basis of genetic information.''.

(b) LIMITATIONS ON GENETIC TESTING; PROHIBITION ON COLLECTION OF GENETIC INFORMATION; APPLICATION TO ALL PLANS.—Section 9802 of such Code is amended by redesignating subsection (c) as subsection (f) and by inserting after subsection (b) the following new subsections:

''(c) GENETIC TESTING.—

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

''(2) RULE OF CONSTRUCTION.—Paragraph (1) shall not be construed to limit the authority of a health care professional who is providing health care services to an individual to request that such individual undergo a genetic test.

''(3) RULE OF CONSTRUCTION REGARDING PAYMENT.—

''(A) IN GENERAL.—Nothing in paragraph (1) shall be construed to preclude a group health plan from obtaining and using the results of a genetic test in making a determination regarding payment (as such term is defined for the purposes of applying the regulations promulgated by the Secretary of Health and Human Services under part C of title XI of the Social Security Act and section 264 of the Health Insurance Portability and Accountability Act of 1996, as may be revised from time to time) consistent with subsection (a).

''(B) LIMITATION.—For purposes of subparagraph (A), a group health plan may request only the minimum amount of information necessary to accomplish the intended purpose.

''(4) RESEARCH EXCEPTION.—Notwithstanding paragraph (1), a group health plan may request, but not require, that a participant or beneficiary undergo a genetic test if each of the following conditions is met:

''(A) The request is made pursuant to research that complies with part 46 of title 45, Code of Federal Regulations, or equivalent Federal regulations, and any applicable State or local law or regulations for the protection of human subjects in research.

''(B) The plan clearly indicates to each participant or beneficiary, or in the case of a minor child, to the legal guardian of such beneficiary, to whom the request is made that—

''(i) compliance with the request is voluntary; and

''(ii) non-compliance will have no effect on enrollment status or premium or contribution amounts.

''(C) No genetic information collected or acquired under this paragraph shall be used for underwriting purposes.

''(D) The plan notifies the Secretary in writing that the plan is conducting activities pursuant to the exception provided for under

this paragraph, including a description of the activities conducted.

''(E) The plan complies with such other conditions as the Secretary may by regulation require for activities conducted under this paragraph.

''(d) PROHIBITION ON COLLECTION OF GENETIC INFORMATION.—

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

''(2) PROHIBITION ON COLLECTION OF GENETIC INFORMATION PRIOR TO ENROLLMENT.—A group health plan shall not request, require, or purchase genetic information with respect to any individual prior to such individual's enrollment under the plan or in connection with such enrollment.

''(3) INCIDENTAL COLLECTION.—If a group health plan obtains genetic information incidental to the requesting, requiring, or purchasing of other information concerning any individual, such request, requirement, or purchase shall not be considered a violation of paragraph (2) if such request, requirement, or purchase is not in violation of paragraph (1).

''(e) APPLICATION TO ALL PLANS.—The provisions of subsections (a)(1)(F), (b)(3), (c), and (d) and subsection (b)(1) and section 9801 with respect to genetic information, shall apply to group health plans without regard to section 9831(a)(2).''.

(c) APPLICATION TO GENETIC INFORMATION OF A FETUS OR EMBRYO.—Such section is further amended by adding at the end the following:

''(f) GENETIC INFORMATION OF A FETUS OR EMBRYO.—Any reference in this chapter to genetic information concerning an individual or family member of an individual shall—

''(1) with respect to such an individual or family member of an individual who is a pregnant woman, include genetic information of any fetus carried by such pregnant woman; and

''(2) with respect to an individual or family member utilizing an assisted reproductive technology, include genetic information of any embryo legally held by the individual or family member.''.

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

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

''(A) a dependent (as such term is used for purposes of section 9801(f)(2)) of such individual, and

''(B) any other individual who is a first-degree, second-degree, third-degree, or fourth-degree relative of such individual or of an individual described in subparagraph (A).

''(7) GENETIC INFORMATION.—

''(A) IN GENERAL.—The term 'genetic information' means, with respect to any individual, information about—

''(i) such individual's genetic tests,

''(ii) the genetic tests of family members of such individual, and

''(iii) subject to subparagraph (D), the manifestation of a disease or disorder in family members of such individual.

''(B) INCLUSION OF GENETIC SERVICES.—Such term includes, with respect to any individual, any request for, or receipt of, genetic services (including genetic services received pursuant to participation in clinical research) by such individual or any family member of such individual.

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

''(D) APPLICATION TO FAMILY MEMBERS COVERED UNDER SAME PLAN.—Information described in clause (iii) of subparagraph (A) shall not be treated as genetic information to the extent that such information is taken into account only with respect to the individual in which such disease or disorder is manifested and not as genetic information with respect to any other individual.

''(8) 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.

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

''(A) a genetic test;

''(B) genetic counseling (including obtaining, interpreting, or assessing genetic information); or

''(C) genetic education.

''(10) UNDERWRITING PURPOSES.—The term 'underwriting purposes' means, with respect to any group health plan ,or health insurance coverage offered in connection with a group health plan—

''(A) rules for, or determination of, eligibility (including enrollment and continued eligibility) for benefits under the plan or coverage;

''(B) the computation of premium or contribution amounts under the plan or coverage;

''(C) the application of any pre-existing condition exclusion under the plan or coverage; and

''(D) other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits.''.

(e) ENFORCEMENT.—

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

''SEC. 9834. ENFORCEMENT.

''For the imposition of tax on any failure of a group health plan to meet the requirements of this chapter, see section 4980D.''.

(2) CONFORMING AMENDMENT.—The table of sections for subchapter C of chapter 100 of such Code is amended by adding at the end the following new item:

''Sec. 9834. Enforcement.''.

(f) REGULATIONS AND EFFECTIVE DATE.—

(1) REGULATIONS.—The Secretary of the Treasury shall issue final regulations or other guidance not later than 1 year after the date of the enactment of this Act 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 the enactment of this Act.

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

(a) NONDISCRIMINATION.—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) An issuer of a medicare supplemental policy shall not deny or condition the issuance or effectiveness of the policy (including the imposition of any exclusion of benefits under the policy based on a pre-existing condition) and shall not discriminate in the pricing of the policy (including the adjustment of premium rates) of an individual on the basis of the genetic information with respect to such individual.''.

(b) LIMITATIONS ON GENETIC TESTING AND GENETIC INFORMATION.—

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

''(x) LIMITATIONS ON GENETIC TESTING AND INFORMATION.—

''(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.—Subparagraph (A) shall not be construed to limit the authority of a health care professional who is providing health care services to an individual to request that such individual undergo a genetic test.

''(C) RULE OF CONSTRUCTION REGARDING PAYMENT.—

''(i) IN GENERAL.—Nothing in subparagraph (A) shall be construed to preclude an issuer of a medicare supplemental policy from obtaining and using the results of a genetic test in making a determination regarding payment (as such term is defined for the purposes of applying the regulations promulgated by the Secretary under part C of title XI and section 264 of the Health Insurance Portability and Accountability Act of 1996, as may be revised from time to time) consistent with subsection (s)(2)(E).

''(ii) LIMITATION.—For purposes of clause (i), an issuer of a medicare supplemental policy may request only the minimum amount of information necessary to accomplish the intended purpose.

''(D) RESEARCH EXCEPTION.—Notwithstanding subparagraph (A), an issuer of a medicare supplemental policy may request, but not require, that an individual or a family member of such individual undergo a genetic test if each of the following conditions is met:

''(i) The request is made pursuant to research that complies with part 46 of title 45, Code of Federal Regulations, or equivalent Federal regulations, and any applicable State or local law or regulations for the protection of human subjects in research.

''(ii) The issuer clearly indicates to each individual, or in the case of a minor child, to the legal guardian of such child, to whom the request is made that—

''(I) compliance with the request is voluntary; and

''(II) non-compliance will have no effect on enrollment status or premium or contribution amounts.

''(iii) No genetic information collected or acquired under this subparagraph shall be used for underwriting, determination of eligibility to enroll or maintain enrollment status, premium rating, or the creation, renewal, or replacement of a plan, contract, or coverage for health insurance or health benefits.

''(iv) The issuer notifies the Secretary in writing that the issuer is conducting activities pursuant to the exception provided for under this subparagraph, including a description of the activities conducted.

''(v) The issuer complies with such other conditions as the Secretary may by regulation require for activities conducted under this subparagraph.

''(2) PROHIBITION ON COLLECTION OF GENETIC INFORMATION.—

''(A) IN GENERAL.—An issuer of a medicare supplemental policy shall not request, require, or purchase genetic information for

underwriting purposes (as defined in paragraph (3)).

''(B) PROHIBITION ON COLLECTION OF GENETIC INFORMATION PRIOR TO ENROLLMENT.—An issuer of a medicare supplemental policy shall not request, require, or purchase genetic information with respect to any individual prior to such individual's enrollment under the policy in connection with such enrollment.

''(C) INCIDENTAL COLLECTION.—If an issuer of a medicare supplemental policy obtains genetic information incidental to the requesting, requiring, or purchasing of other information concerning any individual, such request, requirement, or purchase shall not be considered a violation of subparagraph (B) if such request, requirement, or purchase is not in violation of subparagraph (A).

''(3) DEFINITIONS.—In this subsection:

''(A) FAMILY MEMBER.—The term 'family member' means with respect to an individual, any other individual who is a first-degree, second-degree, third-degree, or fourth-degree relative of such individual.

''(B) GENETIC INFORMATION.—

''(i) IN GENERAL.—The term 'genetic information' means, with respect to any individual, information about—

''(I) such individual's genetic tests,

''(II) the genetic tests of family members of such individual, and

''(III) subject to clause (iv), the manifestation of a disease or disorder in family members of such individual.

''(ii) INCLUSION OF GENETIC SERVICES.—Such term includes, with respect to any individual, any request for, or receipt of, genetic services (including genetic services received pursuant to participation in clinical research) by such individual or any family member of such individual.

''(iii) EXCLUSIONS.—The term 'genetic information' shall not include information about the sex or age of any 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 (including obtaining, interpreting, or assessing genetic information); or

''(iii) genetic education.

''(E) UNDERWRITING PURPOSES.—The term 'underwriting purposes' means, with respect to a medicare supplemental policy—

''(i) rules for, or determination of, eligibility (including enrollment and continued eligibility) for benefits under the policy;

''(ii) the computation of premium or contribution amounts under the policy;

''(iii) the application of any pre-existing condition exclusion under the policy; and

''(iv) other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits.

''(F) 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) APPLICATION TO GENETIC INFORMATION OF A FETUS OR EMBRYO.—Section 1882(x) of such Act, as added by paragraph (1), is further amended by adding at the end the following:

''(4) GENETIC INFORMATION OF A FETUS OR EMBRYO.—Any reference in this section to genetic information concerning an individual or family member of an individual shall—

''(A) with respect to such an individual or family member of an individual who is a pregnant woman, include genetic information of any fetus carried by such pregnant woman; and

''(B) with respect to an individual or family member utilizing an assisted reproductive technology, include genetic information of any embryo legally held by the individual or family member.''.

(3) 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 (x).''.

(c) EFFECTIVE DATE.—The amendments made by this section 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.

(d) 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, 2008, 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, 2008, 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, 2008.

(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 2008 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, 2008. 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) IN GENERAL.—Part C of title XI of the Social Security Act is amended by adding at the end the following new section:

''APPLICATION OF HIPAA REGULATIONS TO GENETIC INFORMATION

''SEC. 1180. (a) IN GENERAL.—The Secretary shall revise the HIPAA privacy regulation (as defined in subsection (b)) so it is consistent with the following:

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

''(2) The use or disclosure by a covered entity that is a group health plan, health insurance issuer that issues health insurance coverage, or issuer of a medicare supplemental policy of protected health information that is genetic information about an individual for underwriting purposes under the group health plan, health insurance coverage, or medicare supplemental policy shall not be a permitted use or disclosure.

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

''(1) GENETIC INFORMATION; GENETIC TEST; FAMILY MEMBER.—The terms 'genetic information', 'genetic test', and 'family member' have the meanings given such terms in section 2791 of the Public Health Service Act (42 U.S.C. 300gg–91), as amended by the Genetic Information Nondiscrimination Act of 2007.

''(2) GROUP HEALTH PLAN; HEALTH INSURANCE COVERAGE; MEDICARE SUPPLEMENTAL POLICY.—The terms 'group health plan' and 'health insurance coverage' have the meanings given such terms under section 2791 of the Public Health Service Act (42 U.S.C. 300gg–91), and the term 'medicare supplemental policy' has the meaning given such term in section 1882(g).

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

''(4) UNDERWRITING PURPOSES.—The term 'underwriting purposes' means, with respect to a group health plan, health insurance coverage, or a medicare supplemental policy—

''(A) rules for eligibility (including enrollment and continued eligibility) for, or determination of, benefits under the plan, coverage, or policy;

''(B) the computation of premium or contribution amounts under the plan, coverage, or policy;

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

''(D) other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits.

''(c) PROCEDURE.—The revisions under subsection (a) shall be made by notice in the Federal Register published not later than 60 days after the date of the enactment of this section and shall be effective upon publication, without opportunity for any prior public comment, but may be revised, consistent with this section, after opportunity for public comment.

''(d) ENFORCEMENT.—In addition to any other sanctions or remedies that may be available under law, a covered entity that is a group health plan, health insurance issuer, or issuer of a medicare supplemental policy and that violates the HIPAA privacy regulation (as revised under subsection (a) or otherwise) with respect to the use or disclosure

of genetic information shall be subject to the penalties described in sections 1176 and 1177 in the same manner and to the same extent that such penalties apply to violations of this part.''.

(b) REGULATIONS; EFFECTIVE DATE.—

(1) REGULATIONS.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Health and Human Services shall issue final regulations to carry out the revision required by section 1180(a) of the Social Security Act, as added by subsection (a). The Secretary has the sole authority to promulgate such regulations, but shall promulgate such regulations in consultation with the Secretaries of Labor and the Treasury.

(2) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date that is 18 months after the date of the enactment of this Act.

SEC. 106. ASSURING COORDINATION.

Except as provided in section 105(b)(1), the Secretary of Health and Human Services, the Secretary of Labor, and the Secretary of the Treasury 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; 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) a dependent (as such term is used for purposes of section 701(f)(2) of the Employee Retirement Income Security Act of 1974) of such individual, and

(B) any other individual who is a first-degree, second-degree, third-degree, or fourth-degree relative of such individual or of an individual described in subparagraph (A).

(4) GENETIC INFORMATION.—

(A) IN GENERAL.—The term ''genetic information'' means, with respect to any individual, information about—

(i) such individual's genetic tests,

(ii) the genetic tests of family members of such individual, and

(iii) subject to subparagraph (D), the manifestation of a disease or disorder in family members of such individual.

(B) INCLUSION OF GENETIC SERVICES.—Such term includes, with respect to any individual, any request for, or receipt of, genetic services (including genetic services received pursuant to participation in clinical research) by such individual or any family member of such individual.

(C) EXCLUSIONS.—The term ''genetic information'' shall not include information about the sex or age of any 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 (including obtaining, interpreting, or assessing genetic information); or

(C) genetic education.

(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 an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes.

SEC. 202. EMPLOYER PRACTICES.

(a) DISCRIMINATION BASED ON 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

(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.

(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 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;

(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; or

(6) where the employer conducts DNA analysis for law enforcement purposes as a forensic laboratory, includes such analysis in the Combined DNA Index System pursuant to section 210304 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14132), and requests or requires genetic information of such employer's employees, but only to the extent that such genetic information is used for analysis of DNA identification markers for quality control to detect sample contamination.

(c) PRESERVATION OF PROTECTIONS.—In the case of information to which any of paragraphs (1) through (6) 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) DISCRIMINATION BASED ON 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;

(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

(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 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), (2), or (3) of subsection (a) or treated or disclosed in a manner that violates section 206.

SEC. 204. LABOR ORGANIZATION PRACTICES.

(a) DISCRIMINATION BASED ON 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;

(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

(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 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), (2), or (3) of subsection (a) or treated or disclosed in a manner that violates section 206.

SEC. 205. TRAINING PROGRAMS.

(a) DISCRIMINATION BASED ON 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 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

(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 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; 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, 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;

(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; or

(6) where the employer conducts DNA analysis for law enforcement purposes as a forensic laboratory, includes such analysis in the Combined DNA Index System pursuant to section 210304 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14132), and requests or requires genetic information of such employer's apprentices or trainees, but only to the extent that such genetic information is used for analysis of DNA identification markers for quality control to detect sample contamination.

(c) PRESERVATION OF PROTECTIONS.—In the case of information to which any of paragraphs (1) through (6) of subsection (b) applies, such information may not be used in violation of paragraph (1), (2), or (3) 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, 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. An employer, employment agency, labor organization, or joint labor-management committee shall be considered to be in compliance with the maintenance of information requirements of this subsection with respect to genetic information subject to this subsection that is maintained with and treated as a confidential medical record under section 102(d)(3)(B) of the Americans With Disabilities Act (42 U.S.C. 12112(d)(3)(B)).

(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 except—

(1) to the employee or member of a labor organization (or family member if the family member is receiving the genetic services) at the written 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 inform the employee or member of the court order and any genetic information that was disclosed pursuant to such 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.

(c) RELATIONSHIP TO HIPAA REGULATIONS.—With respect to 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), this title does not prohibit a covered entity under such regulations from any use or disclosure of health information that is authorized for the covered entity under such regulations. The previous sentence does not affect the authority of such Secretary to modify such regulations.

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 of the United States (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 of the United States (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 of the United States).

(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 of the United States (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 of the United States (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 of the United States).

(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 employee 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 of the United States (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 of the United States (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 of the United States).

(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 of the United States (42 U.S.C. 1988), shall be powers, remedies, and procedures this title provides to 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 of the United States (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 of the United States).

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

(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–2(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 Representatives;

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

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

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

(a) IN GENERAL.—Nothing in this title shall be construed to—

(1) 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, including the 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) provide for enforcement of, or penalties for violation of, any requirement or prohibition applicable to any employer, employment agency, labor organization, or joint labor-management committee the enforcement of which, or penalties for which, are provided under the amendments made by title I;

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

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

(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);

(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; or

(7) require any specific benefit for an employee or member or a family member of an employee or member under any group health plan or health insurance issuer offering group health insurance coverage in connection with a group health plan.

(b) GENETIC INFORMATION OF A FETUS OR EMBRYO.—Any reference in this title to genetic information concerning an individual or family member of an individual shall—

(1) with respect to such an individual or family member of an individual who is a pregnant woman, include genetic information of any fetus carried by such pregnant woman; and

(2) with respect to an individual or family member utilizing an assisted reproductive technology, include genetic information of any embryo legally held by the individual or family member.

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 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 PROVISIONS

SEC. 301. GUARANTEE AGENCY COLLECTION RETENTION.

Clause (ii) of section 428(c)(6)(A) of the Higher Education Act of 1965 (20 U.S.C. 1078(c)(6)(A)) is amended to read as follows:

''(ii) an amount equal to 23 percent of such payments for use in accordance with section 422B, except that beginning October 1, 2007, and ending September 30, 2008, this subparagraph shall be applied by substituting '22 percent' for '23 percent'.''.

SEC. 302. 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 SPEAKER pro tempore. Pursuant to the rule, the gentleman from California (Mr. GEORGE MILLER) and the gentlewoman from Illinois (Mrs. BIGGERT) each will control 20 minutes.

The Chair recognizes the gentleman from California.

GENERAL LEAVE

Mr. GEORGE MILLER of California. Mr. Speaker, I request 5 legislative days in which Members may insert material relevant to H.R. 493 in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield myself 2 minutes.

(Mr. GEORGE MILLER of California asked and was given permission to revise and extend his remarks.)

Mr. GEORGE MILLER of California. Mr. Speaker, I am pleased that the House will take up H.R. 493, the Genetic Information Nondiscrimination Act of 2007.

This legislation is sponsored by two of my distinguished colleagues, Congresswoman LOUISE SLAUGHTER, who has been waiting 10 years to debate this bill on the floor of the House of Representatives, and Congresswoman JUDY BIGGERT, who has been a member of the committee which I chair, the Committee on Education and Labor, and I commend the sponsors for their hard work and for their perseverance.

This bill is long overdue. The Human Genome Project started the revolution in science and medicine nearly 20 years ago by identifying the specific chromosomes within the genes that make up the human body. Once the scientists identified and understood these genetic building blocks, they developed tests that identified genetic markers for diseases that could, but may never, occur.

We understand that this scientific revolution can and will save lives. It can save children from devastating illnesses, and once these tests and treatments become more widely available, they will help us live longer lives with less debilitating diseases.

The key to unlocking this scientific revolution is to assure individuals of genetic privacy and nondiscrimination when they undergo genetic testing and counseling. Many Americans already forgo testing for fear of losing their jobs and their health insurance. In a 2003 National Institutes of Health study, 39 percent of the individuals surveyed cited fear of losing their health insurance as the most distressing issues related to genetic testing.

□ 1345

There is a clear need for us to pass this law to protect genetic information from discriminatory uses. We all suffer if fears of lost jobs or health insurance stifle these scientific advances.

That is why 41 States have passed laws to prohibit discrimination in the individual health insurance market.

Mr. Speaker, I reserve the balance of my time.

Mrs. BIGGERT. Mr. Speaker, I yield such time as he may consume to the gentleman from Louisiana (Mr. BOUSTANY), a member of the Education and Labor Committee.

Mr. BOUSTANY. Mr. Speaker, I rise in support of this legislation, and while I do not by any means think it is a perfect bill, I do believe it contains a number of important improvements over prior versions of the legislation. More importantly, it marks a commitment by this Congress to ensure that the law of the United States protects American workers and health care consumers from discrimination on the basis of their genetic makeup. Because that goal is so critical, I will vote for this bill today, and I urge my colleagues to do likewise.

I would like to commend my colleagues, and fellow member on the Committee on Education and Labor, Representative JUDY BIGGERT, and Congresswoman LOUISE SLAUGHTER for their tremendous work and years of dedication on this important issue. Both of you have been persistent and effective on so many issues that have come before this committee and this Congress. Both should be commended for adding this important bill to your list of legislative accomplishments.

As was noted during our committee's consideration of this bill, I believe that the title of the legislation before us, the Genetic Information Nondiscrimination Act, embodies a proposition that all members of our committee and, indeed, all Members of this Congress should endorse. Simply put, no employee should face discrimination on the basis of genetic makeup or on any characteristic other than the ability to do the job. Similarly, no employee should risk his or her health insurance status simply because of the possibility that they may someday develop an illness.

This bill was drafted with those fundamental principles in mind, and I believe that through the legislative process we have taken steps toward ensuring that the bill we pass fulfills those principles, while minimizing the potential for unintended consequences.

I would like to point out a number of improvements in the bill that I think merit attention.

I am pleased that the bill before us today embodies the same logic as a past executive order issued by President Clinton to ensure that this legislation would not inadvertently serve as a broad, new Federal mandate requiring all insurance plans and employers to cover all treatments related to genetic-related conditions. That is exactly the type of unintended consequence we were seeking to avoid, and I am pleased that we were able to work this out.

Second, I would like to highlight a provision in the legislation that ensures that employers, who are currently subject to a number of confidentiality and recordkeeping requirements under law, are not burdened by yet another redundant set of paperwork requirements. The bill before us today provides that with respect to genetic information, if an employer maintains employee records and treats them as it does confidential medical records under the Americans with Disabilities Act, it is in compliance with this new genetics law.

Third, I applaud a significant improvement in the bill, and namely, its extension of genetic nondiscrimination protection to all Americans. One of the issues raised during our committee's consideration of the bill was concern that the bill's protections did not adequately extend to cover children in utero or at early stages of development or in connection with in vitro fertilization and other technologies. I am very pleased that the final bill before us addresses these issues to the satisfaction of all Members on both sides of the aisle who have worked in good faith to ensure the broadest protection possible.

The bill contains a number of other improvements over prior versions, representing issues we were able to work through over the past couple of months and which demonstrate how the committee process is truly meant to work. We were presented with well-intentioned legislation, heard meaningful testimony on it and its potential impact on employers and employees

alike, raised and debated legitimate concerns, and worked together to bridge the gap between where we began and where we stand today. I thank the staff on both sides of the aisle for making this a reality.

I would be remiss if I did not point out concerns I have with the bill and express my hope that as the legislative process continues, and if and when the provisions of this bill are administered, we give due weight to these concerns.

I remain concerned that the bill's penalty provisions are overbroad and will potentially subject employers to punitive damages for simple paperwork violations. I am equally concerned that the bill we pass today will not set a single national standard, but still leave employers subject to a patchwork of varying requirements on a State-by-State basis. And finally, I think the bill would be significantly improved if we made clear that employers would not be held liable for the acquisition and use of genetic information where such use was required or justified by business necessity.

As we send this bill to the United States Senate for consideration, I would urge my colleagues in that body to take up and address these issues. Beyond that, as courts and administrative agencies interpret and enforce these laws, I would urge them to heed the intent of Congress; namely, that this bill's most egregious penalties must be reserved for the most egregious violations of the law, and that our intent is not to ensnare employers acting in good faith in a legal web of penalties and damages.

As I noted at the outset of my remarks, our actions today will ensure that the law of the United States protects American workers and health care consumers from discrimination on the basis of their genetic makeup, a goal I think that is shared by every Member of this House. I urge my colleagues to support this legislation.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield 5½ minutes to the gentlewoman from New York (Ms. SLAUGHTER), the Chair of the Rules Committee of the House, who has worked on this legislation for a very long time, without whose persistence with this bill we would not be here on the floor.

Ms. SLAUGHTER. Mr. Speaker, I thank the gentleman for yielding, and I thank my partner, Mrs. BIGGERT, also for the hard work she has done. It has taken us collectively 12 years to get to this point, and I want to say at the outset we are not talking about some population of people who might have bad genes. We are talking about us, because every one of us has bad genes, between 30 and 40. So this protection goes not just to some employee somewhere, but all of us and the people we love.

It is with great pride that I rise today. As a matter of fact, I could not stop smiling all day. With the passage of this bill, we are going to stand up for the future health of our citizens and one of medicine's most promising fields, genetic research.

It is almost heartbreaking to me to think that we are 10 years behind in genetic research and the people we could have helped up to now, but it is the culmination of a bipartisan effort to prevent the improper use of genetic information in the workforce and insurance decisions.

It is no longer simply the work of science fiction writers.

There have been many instances of genetic discrimination, from a woman who was fired after a genetic test revealed her risk for lung disorder, to a social worker who, despite outstanding performance reviews, was dismissed because some member of her family had Huntington's disease.

Consider the case of Heidi Williams, an individual diagnosed with alpha-1 antitrypsin deficiency. In 2004, she testified that a large health insurance company had denied coverage for her two children because they were carriers for the disease.

GINA will make these discriminatory practices illegal by prohibiting health insurers from denying coverage or charging higher premiums to a healthy individual because of a genetic predisposition, which means you may never get the disease, might happen.

GINA also bars employers from using genetic information for hiring, firing, job placement or promotion decisions.

In the 12 years since I first introduced this legislation, the need for it has grown rapidly. Scientific research has advanced so quickly that we cannot possibly afford to wait any longer.

It offers immense potential for early treatment and prevention of numerous diseases.

Since the sequencing of the human genome was completed in 2003, researchers have identified genetic markers for a wide variety of health conditions, and new progress is being made every day.

Fifteen percent of all cancers are found to have an inherited susceptibility. Ten percent of adult chronic diseases, heart disease and diabetes, America's top killers, have a genetic component.

Already, over 15,500 recognized genetic disorders affect 13 million Americans, and each and every one of us, as I said before, and it is so important for you to know this, each and every one of us is in that category of carrying between 5 and 50 bad genes, or predicted genes. They may not be so bad.

That is exactly why this bill is so important to all of us, not just those with recognized disorders. There is not a single person on the planet that has perfect genes. Every one of us, and let me make that clear again, are all vulnerable to genetic discrimination.

To give you an idea of the potential that exists from this research, consider that a genetic test can tell a woman with a family history of breast cancer if she has the genetic mutation that can cause it, long before the cancer might develop.

For these exciting scientific advances to continue, for the potential of this technology to be realized, we have to make genetic testing something commonplace rather than something that is feared and kept secret.

But sadly, the threat of genetic discrimination and the fear of being passed over for promotion, forced to pay more for health insurance, or even denied coverage, men and women are much less likely to be tested and to take advantage of that potentially life-saving information.

Most importantly, if individuals do not participate in the clinical trials, we will never be able to reap the great benefits of this genetic technology.

In a 2006 Cogent Research poll, 66 percent of respondents said they were concerned about how their genetic information would be stored and who would have access to it.

I want to thank everybody, first Dr. Collins who sequenced the human genome and testified before Congress at least 12 times, and I cannot imagine anybody would be not be moved by his testimony. He is here with us today.

I want to thank all the committee members, certainly Mrs. BIGGERT who has worked so hard, and her staff; and the three committees who have jurisdiction here who have done so much for us. Mr. MILLER, the first thing I think in January he told me this bill was coming to the floor.

I want to thank Congresswoman ESHOO for her untiring effort to help bring this, and certainly the member of my staff who has worked so hard.

It is a great day. You may not realize it but it also just turns out to be DNA Day. What a wonderful way to celebrate it.

Seventy-two percent agreed that the government should establish laws and regulations to protect the privacy of individuals' genetic information. And 85 percent said that without amending current law, employers would use this information to discriminate.

Before I close, I want to reiterate the broad support that this bill enjoys. We have over 220 Democrat and Republican cosponsors behind this bill.

In past Congresses, the Senate has passed this bill twice with unanimous support. And I would like to thank the President who today issued a statement of administration policy in support of the bill.

I want to take a moment to thank the lead Republican cosponsor of this bill, Congresswoman JUDY BIGGERT for her dedication to this bill, along with Congresswoman ANNA ESHOO for being a strong advocate for this bill over the years.

I also want to thank Dr. Francis Collins for his support. His testimonies over the years should have swayed even the firmest unbelievers that genetics has the potential to change our health care system as we know it.

Lastly, I want to thank the advocates from the health and science community. Over 200 organizations including Hadassah support this bill.

GINA will do more than stamp out a new form of discrimination—it will help our country be a leader in a field of scientific research that

holds as much promise as any other in history.

And it will allow us to realize the tremendous potential of genetic research without jeopardizing one of the most fundamental privacies that can be imagined.

Mr. Speaker, today is a momentous day.

And, I urge all my colleagues to support this bill.

Mrs. BIGGERT. Mr. Speaker, I yield myself 3 minutes.

Obviously I rise in strong support of H.R. 493. I think it has been an honor to work with the gentlewoman from New York (Ms. SLAUGHTER) and, I might add, work we did.

When the Human Genome Project was completed in 2003, the House of Representatives recognized it as ''one of the most significant scientific accomplishments of the past 100 years.''

For the first time, individuals actually could know their genetic risk of developing disorders such as cancer, diabetes, heart disease, Parkinson's, Alzheimer's, and they could take preventative measures to decrease their risks. It spawned a personalized medicine movement, focusing on catching diseases earlier, when they are cheaper and easier to treat or, even better, preventing the onset of the disease in the first place.

But after investing more than $3.7 billion in taxpayer money to achieve this breakthrough, Congress walked away and left the job unfinished.

We left people without any assurance that their genetic information would not be used against them. So, understandably, they avoided this great technology, never realizing the untold health benefits and savings.

This concern even spilled over into NIH, where a fear of genetic discrimination is currently the most commonly cited reason for not participating in research on potentially lifesaving genetic testing for breast cancer and colon cancer. Fully one-third of those eligible to participate declined to do so for this reason, undermining the development of new treatments and cures.

Mr. Speaker, today Congress is here to settle some unfinished business and provide Americans the protections against genetic discrimination in health care insurance and employment that they need to utilize genetic testing without fear.

Besides the more than 200 health advocacy and business organizations that support this bill, recent surveys show 93 percent of Americans believe that employers and insurers should not be able to use genetic information to discriminate.

With numbers like this, it should come as no surprise that this legislation enjoys overwhelmingly bipartisan support. And I want to take a moment to thank my good friend Ms. SLAUGHTER, Mr. WALDEN and Ms. ESHOO. It truly has been a pleasure working with all of them. I would also like to thank Mr. MCKEON, Mr. MILLER and all the other chairmen and ranking full committee and subcommittee members for working together to make this a better bill.

I would be remiss if I did not mention the members of the Coalition for Genetic Fairness, without whom this bill would not be possible.

Finally, I would like to thank Brian Petersen of my staff and Michelle Adams of Ms. SLAUGHTER's staff and all the outstanding staff who worked tirelessly behind the scenes on our behalf and who have put in long hours on this legislation.

Why must we pass this bill today? Because it dramatically reduces health care costs while saving or extending human lives.

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Madam Speaker, I reserve the balance of my time.

Mr. GEORGE MILLER of California. Madam Speaker, I yield 2 minutes to the gentleman from Michigan (Mr. DINGELL), the chairman of the Energy and Commerce Committee.

(Mr. DINGELL asked and was given permission to revise and extend his remarks.)

Mr. DINGELL. I thank the gentleman for yielding to me. I applaud the work of the three committees that have brought this legislation to us, and the work of my good friend from California (Mr. GEORGE MILLER) as well as that of the distinguished gentleman from New Jersey (Mr. ANDREWS). I want to say a word of praise for our colleagues from Ways and Means led by their distinguished chairman, Mr. RANGEL.

On our committee, a lot of people worked on it very hard: Mr. PALLONE, the chairman of our subcommittee; Ms. ESHOO, who worked very hard on the matter; and our good friend Mr. STUPAK and the distinguished gentlewoman from Colorado, who now occupies the Chair, Ms. DEGETTE, who both did a superb job in negotiating language to avoid the difficult questions associated with birth and issues relating to abortion.

I want to say a word of praise for the distinguished gentlewoman from New York (Ms. SLAUGHTER) who did so much.

Madam Speaker, this is an extraordinary bill. It prevents individuals from employment discrimination. It would make it unlawful for employers, employment agencies, labor organizations or training programs to deny individuals the employment opportunities because of genetic information. It requires genetic information to be treated as a part of the individual's confidential medical record. In addition to that, it protects individuals from insurance discrimination by prohibiting insurers both in the group and individual markets from using genetic information to determine eligibility to establish individual premiums based on genetic information of individuals or their family members.

The bill has been significantly amended since its introduction and has been refined through the work of the three able committees of jurisdiction. The version before us includes key elements that were reported by the Committee on Energy and Commerce, and includes a useful definition change of the word ''family member.'' It is a fine piece of legislation.

I want to pay a tribute to my friend, Mr. BARTON, the ranking member of the committee on Energy and Commerce, for his cooperation on this matter. This is an excellent bill. It should pass, it should become law. My private guess, my dear friends, is that it will exceed, in terms of votes, 350 or 400.

I also want to express my respect and affection for the gentlewoman from California (Mrs. CAPPS), who worked hard on this bill.

Mrs. BIGGERT. Madam Speaker, I yield 3½ minutes to the gentleman from Florida (Mr. STEARNS).

(Mr. STEARNS asked and was given permission to revise and extend his remarks.)

Mr. STEARNS. Let me also congratulate the authors of the bill and the fine work that they have done. We have had a hearing in Energy and Commerce, where I serve, but I thought I would just follow up a little bit on what the gentleman from Louisiana talked about, a little bit about the preemption.

Madam Speaker, I think almost everybody in this House is for genetic protection from genetic discrimination. There have been many bills over the years that Ms. SLAUGHTER has worked on. I think she indicated she has worked on it for 12 years. I compliment her on her perseverance. Sometimes it takes that kind of conscientiousness to get anything accomplished here. The fact we are able to get this today is a success story. In fact, the President has indicated, I think nationally, that he would like to sign this bill. So it is on a fast track, and I am sure that we won't have any trouble in the suspension passing it.

But one significant concern that I bring to the attention of my colleagues is a Federal preemption. I mention this as perhaps, as the Senate and the House come together, they can solve this problem. So I will continue to talk about it.

According to CBO, the bill would ''preempt some State laws that establish confidentiality standards for genetic information, and would restrict how State and local governments use such information in employment practices and in the provision of health care to employees.'' This bill will create, I think, a little bit of a problem, the confusion in about the 42 States that currently have laws prohibiting discrimination based upon genetic information.

For example, my home State of Florida is very strong with clear definitions. If we superimpose this bill, it would create a lot of confusion, I think, in my State of Florida. Many exemptions occur, HIV testing, drug

testing, forensic analysis, routine blood tests for current health would be negated. Even more frustrating for the regulated, the operative Federal-State relationship rule is whatever part of a State law is more stringent survives. The question is, who decides when that occurs? The courts? I think that is a question the Senate should look at.

There are better approaches, but partial preemption is what we see here. I think it should be changed. Maybe the answer is across-the-board preemption, and that is what I am recommending, or maybe allow States to apply for an exemption. I believe Florida and other States are substantially meeting this policy.

In any event, some Federal agency should at least adjudicate so that the regulated community is not subject to uncertainty, fines, ultimately litigation. So I asked this same question when we had the markup in Energy and Commerce.

So I asked during our Energy markup on March 23 about this to the staff. At that time, it was difficult to understand what their answer was. I followed up on March 27 with a letter to Chairman DINGELL, signed along with a Health Subcommittee ranking member NATHAN DEAL. We have not at this point received a reply to this letter, and I just urge that somehow in the conference on this bill that we try to answer that question.

Finally, 11 Energy and Commerce Republicans signed our views to the energy report, which, Madam Speaker, I make part of the RECORD, and I support the intention of this legislation. It's good. I congratulate everybody, but I would like to see a preemption and other clear issues worked out in conference.

I support protection from genetic discrimination, so much so I have offered my own bills in prior Congresses. However, this bill has, some problems I would like resolved.

(For the record: Many people have been remarking that we have been working for over a dozen years on legislation to safeguard individuals from discrimination against due to their genetic profile when they seek to purchase health insurance or employment.

Well, I count myself among those waiting. For, in 1995, I was proud to be named the first Chair of the Congressional Task Force on Medical Records and Genetics, by then Commerce Committee Chairman Bliley. Congressman GENE GREEN (Committee Democrat) was my Co-chair, and together we held many meetings and hearings with witnesses from the genetics community, including insurance companies, the biotech and pharmaceutical industries, and patient advocates. Indeed, one of my proudest legislative achievements came in the Health Insurance Portability and Accountability Act of 1996 (HIPAA). In the Commerce Committee markup of HIPAA, I was successful in adding two words to the list of protections: "genetic information." It survived and is in the HIPAA law today.

And, I have continued my engagement, authoring bills in the last several Congresses to prohibit genetic nondiscrimination in health insurance.)

One significant concern is the lack of clarity over federal pre-emption. According to CBO, the bill would "preempt some state laws that establish confidentiality standards for generic information, and would restrict how state and local governments use such information in employment practices and in the provision of health care to employees." GINA will create confusion for the 43 states that currently have laws prohibiting discrimination based on genetic information.

Florida's law, for example, is very strong, with clear definitions. If we superimpose GINA it will create a lot of confusion. Many exemptions—HIV testing, drug testing, forensic analysis, routine blood tests for current health—would be negated. Even more frustrating for the regulated, the operative Federal-state relationship rule is whatever part of a state law is more stringent survives. And who will decide? The courts.

There are better approaches, but partial preemption is unsatisfactory. Maybe the answer is across the board preemption. Or, maybe allow states to apply for an exemption. I believe Florida and other States are substantially meeting the policy. In any event, some Federal agency should at least adjudicate so that the regulated community is not subject to uncertainty, fines, or litigation.

I asked this in the Energy and Commerce markup March 23. And, I followed up on March 27 with a letter to Chairman DINGELL, signed along with Health Subcommittee Ranking Member NATHAN DEAL—a response to which has not arrived. Finally, eleven Energy & Commerce Republicans signed Additional Views to our Committee Report, which I resubmit for the RECORD.

Again, I support the intention of this legislation, but would like to see pre-emption and other unclear issues worked out in conference.

GINA WILL CREATE CONFUSION FOR THE 43 STATES THAT CURRENTLY HAVE LAWS PROHIBITING DISCRIMINATION BASED ON GENETIC INFORMATION

We have not done a complete survey but understand that 43 States already have programs and definitions. We would then want to ask Members if they find the programs in their state inadequate. If you were to superimpose the GINA requirements on those states it will involve a lot of confusion. Many exemptions and clear statements regarding HIV testing, drug testing, and other issues would appear to be wiped out. Even more frustrating for the regulatory community the operative Federal-state relationship rule is whatever part of a state law is more stringent survives. This means pieces of state law will apply while other pieces will be preempted. This would all have to be sorted out by the courts. We think there are better approaches. The worst approach is this partial preemption approach. For some programs there is across the board preemption. In other cases, a state is allowed to submit its program for evaluation as a whole. If such programs are adequate or substantially promoting the policy, they would stay intact. We believe our States are substantially meeting the policy and do not see the need for disruption. In any event, some Federal agency should at least sort out what law applies in advance so that the regulated community is not held hostage to more lawyers and uncertainty. Joe Barton. Nathan Deal. Michael Burgess. Steve Buyer. Barbara Cubin. Mike Rogers. John Shadegg. Cliff Stearns. Lee Terry. Heather Wilson. Tim Murphy.

Mr. GEORGE MILLER of California. Madam Speaker, I yield 2½ minutes to the gentlewoman from California (Ms. ESHOO) who, again, has worked so hard to bring this legislation to the floor and helped to resolve some of the differences that have existed between the committees, and I thank her for her work.

Ms. ESHOO. I thank the distinguished chairman of the Education Committee.

Madam Speaker, today is a very exciting day. I don't think there is any feeling that beats coming to the floor and knowing that success awaits us and the American people. I think that's the case today as we gather to support the Genetic Information Nondiscrimination Act, known as GINA.

Many times over the course of American history in this Chamber, discrimination has been struck down. I believe that is what we are doing here today with this bill. When the sequencing of the Human Genome Project was completed in April of 2003, it was a great, great victory in the scientific community. So many of us understood what the implications were for our constituents, for the people of our Nation, and people in the world.

Researchers identified genetic markers for a variety of chronic health conditions. When they did, they threw open the doors to increase the potential for early treatment and prevention of numerous diseases.

But there was something that stepped in the way, and that was the threat of discrimination against anyone that subjected themselves to the test, found that they had a gene that wasn't perfect, which I think is the potential of every single one of us, and as a result of that, that their job would be threatened, and that their health care insurance could be dropped. What this bill does today is to throw the doors open with a guarantee by making it illegal for health plans and health insurers to deny coverage to a healthy individual or charge a higher premium based solely on genetic predisposition to a specific disease.

I could go on and on about the bill, but the fact of the matter is, it has well over 200 cosponsors. It is a real bipartisan bill. Thank you to Congresswoman LOUISE SLAUGHTER for her tenacity and her belief in the effort. Twelve years, that is a long time.

I would also like to say what a difference a new majority makes, because this bill was really blocked from coming to the floor for full consideration. To Representative BIGGERT, she has been just as tenacious as LOUISE SLAUGHTER, to all of my colleagues that have worked on this, to the chairman, Mr. GEORGE MILLER of California, Mr. DINGELL, Mr. RANGEL, for making sure that they saw this through and, Ms. SLAUGHTER, of course, she slaughtered us all, I tell you, on this, she made sure, and to the inspirational Dr. Francis Collins, who testified over and over again what the possibilities were that awaited the American people.

I pay tribute to all of you. It's a great day here in the House of Representatives.

Mrs. BIGGERT. Madam Speaker, may I inquire how much time remains on both sides?

The SPEAKER pro tempore (Ms. DEGETTE). The gentlelady from Illinois has 8 minutes remaining. The gentleman from California has 9 minutes remaining.

Mrs. BIGGERT. Madam Speaker, I yield 2 minutes to a member of the Energy and Commerce Committee, Dr. BURGESS.

Mr. BURGESS. Madam Speaker, it's my feeling that this bill should have been brought to the floor under a rule to perhaps allow additional improvement and amendment, as pointed out by Mr. STEARNS. There is the opportunity, perhaps in conference, to further improve the bill. I don't think our work is quite done.

One improvement that I was able to effect in our committee, the Committee on Energy and Commerce, is the exclusion of title II for covered entities already subject to regulation under HIPAA statutes, the Health Insurance Portability and Accountability Act statutes. Dual regulation of communications, uses, disclosures and other aspects and activities, subject to regulation, currently regulated by the Department of Health and Human Services, by GINA, would have had disastrous consequences for coordination of care.

We need to make clear that providing health services is not the same as hiring, firing or job promotion. Genetic information is medical information and is not restricted under the House bill for employer-sponsored services that are covered in entities under HIPAA. Also, nothing in this bill affects the practice of medicine. That is not the intention, and this is among the principles that I have sought to ensure.

I would note that the current HIPAA regulations are extremely sophisticated. They are the result of over 5,000 communications and comments. We are not going to trump those regulations under title II, and that will prevent the possibility for enormous disruption and adverse consequences.

Failure to address this issue would have been calamitous, for efforts of using health information, new efforts for using health information technology. Medical information systems cannot be burdened with legal requirements that would, in effect, force complicated segregation of genetic information from other medical information and health care, including those in employer-sponsored clinics.

Still, with all of those caveats, I will be voting in favor of the bill today. I do look forward to making certain that these modifications survive in conference and perhaps there will be the opportunity to even make things a little bit better in that process.

Mr. GEORGE MILLER of California. Madam Speaker, I yield 2 minutes to the gentleman from New Jersey (Mr. ANDREWS).

(Mr. ANDREWS asked and was given permission to revise and extend his remarks.)

Mr. ANDREWS. I thank my friend for yielding. I congratulate Chairman MILLER and Mr. RANGEL and Mr. DINGELL for their work, and especially my friend, Congresswoman SLAUGHTER, and Congresswoman BIGGERT for her great work. I think we should reflect on the great work they are achieving on this bill.

Madam Speaker, if your grandmother had breast cancer, you shouldn't be denied a job or a promotion. That's what this bill says. If your dad is a diabetic, you shouldn't have to pay higher health insurance premiums. That's what this bill says.

When the scientific community comes to you and asks you to participate in a genetic study that may hold the key to unlocking the mystery of AIDS or Alzheimer's or leukemia, you should be able to participate fully and freely without fear that your genetic information will be unlawfully and improperly shared with someone who wants to do the wrong thing with it.

□ 1415

This is a significant achievement, not only in protecting the working men and women of America from discrimination, but in empowering American scientists to achieve the maximum that we can from the promise of genetic medicine.

The bipartisan effort to support this bill will be vindicated year after year and case after case as Americans can work freely, can avoid discrimination, and as scientists can take the next step and the next step and the next step to unlock the keys to genetic medicine.

So I congratulate my friends, Madam Speaker, for their great work on this bill. I enthusiastically support it. I ask everyone to vote ''yes.''

I would like to note that the final version of H.R. 493 represents the input and compromises made by 3 committees of jurisdiction.

In particular, I would like to mention 3 critical compromises reflected in the final bill:

(1) the bill does not affect or limit the ability of health plans to provide information to their members about the availability and benefits of genetic tests,

(2) the bill is intended to supplement the protections afforded under HIPAA and not intended to prohibit practices permitted under HIPAA unless explicitly stated, and

(3) the bill is intended to provide 2 comparable but distinct causes of action for violations of the Act with respect to genetic information. Health plans and insurers generally are subject to the requirements of the title 1. Employers, including to the extent employers control or direct health benefit plans, are subject to the requirements of title II of the bill.

I commend my colleagues on all 3 committees for their hard work to enable us to pass this important genetic information protection bill.

Mrs. BIGGERT. Madam Speaker, I yield myself 1 minute.

Madam Speaker, I think that by incorporating genetic testing, we can significantly reduce the cost of chronic disease, which currently accounts for 70 cents of every health care dollar. I think the President of the United States understands this, and I will include for the RECORD the statement of administrative policy from the White House in favor of this legislation.

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET,

Washington, DC, April 25, 2007.

STATEMENT OF ADMINISTRATION POLICY

H.R. 493—GENETIC INFORMATION NONDISCRIMINATION ACT OF 2007 (REP. SLAUGHTER (D) NY AND 224 COSPONSORS)

The Administration favors enactment of legislation to prohibit the improper use of genetic information in health insurance and employment. The Administration supports House passage of H.R. 493, which would prohibit group health plans and health insurers from denying coverage to a healthy individual or charging that person higher premiums based solely on a genetic prediposition to developing a disease in the future. The legislation also would bar employers from using individuals' genetic information when making hiring, firing, job placement, or promotion decisions. The Administration appreciates that the House bill clarifies that the bill's protections cover unborn children.

The mapping of the human genome has led to more information about diseases and a better understanding of our genetic code. Scientists are pursuing new diagnostics, treatments, and cures based on this information, but the potential misuse of this information raises serious moral and legal issues. Concern about unwarranted use of genetic information threatens the utilization of existing genetic tests as well as the ability to conduct further research. The Administration wants to work with Congress to further perfect this legislation and to make genetic discrimination illegal and provide individuals with fair, reasonable protections against improper use of their genetic information.

Madam Speaker, I reserve the balance of my time.

Mr. GEORGE MILLER of California. Madam Speaker, I yield 2 minutes to the gentleman from New Jersey (Mr. PALLONE).

Mr. PALLONE. Madam Speaker, I thank the chairman for yielding.

Madam Speaker, I rise in strong support of H.R. 493, of which I am a cosponsor. As science continues to make rapid advancement in the area of genetics, I cannot stress how important this bill is to every American citizen.

Genetic testing has increasingly become an integral part of the American health care system, providing the possibility to develop better therapies that are more effective against disease and allow individuals to take steps to reduce the likelihood that they will contract a particular disorder. However, as knowledge of the human genome expands, a greater proportion of the population will likely be identified as carriers of mutations associated with a greater risk of certain diseases, indicating that virtually all people are potentially victims of genetic discrimination in health insurance.

Along with the increasing prevalence of genetic testing comes the growing fear of the potential misuse of this information by way of discrimination in health insurance and employment. Accordingly, we need to strengthen current laws at both the Federal and State level in order to protect against the possibility of genetic discrimination. This bill will go a long way in making sure that this highly private information cannot be misused or abused.

In closing, I want to thank the primary sponsors of this legislation, particularly Ms. SLAUGHTER, I know how long she has worked on this, along with Ms. ESHOO and others. We finally came together in a bipartisan fashion to bring up what I think is a bipartisan bill. They should all be commended, all of us should be commended for our efforts. I think that this could serve as a model for bipartisan cooperation on other bills.

Mrs. BIGGERT. Madam Speaker, I reserve the balance of my time.

Mr. GEORGE MILLER of California. Madam Speaker, I yield 2 minutes to the gentleman from Michigan (Mr. STUPAK), a member of the Energy and Commerce Committee.

Mr. STUPAK. Madam Speaker, I thank the gentleman for yielding.

Madam Speaker, I rise in support of H.R. 493, the Genetic Information Nondiscrimination Act, or GINA. Congratulations to all who have worked for the last number of years on this legislation, especially Ms. SLAUGHTER.

In reviewing this bill, I was concerned that families may face genetic information discrimination from testing of embryos and fetuses, plus I was concerned about children who are in the process of being adopted. As genetic testing becomes increasingly common, GINA protections must be extended to genetic material gathered through pre-implementation genetic diagnoses, amniocentesis or other future techniques.

Together with Chairman DINGELL, Ms. DEGETTE and Mr. SMITH, we were able to close this loophole, which could have been exploited against families on the basis of genetic material of their fetuses or children in the process of being adopted.

I am proud to have worked with so many Members to correct the concerns I had on this bill. I support the passage of this bill.

Mr. GEORGE MILLER of California. Madam Speaker, I yield 2 minutes to the gentlewoman from California (Mrs. CAPPS), a member of the committee.

Mrs. CAPPS. Madam Speaker, I thank my California colleague for yielding me time.

Madam Speaker, I also rise in strong support of H.R. 493, and I commend my colleagues, the Congresswomen who have been acknowledged, SLAUGHTER, ESHOO, BIGGERT and others who persisted over the years to bring this legislation to the floor, and acknowledge that the Caucus for Women's Studies of the 110th Congress has made the passage of this its highest priority.

I am also struck by the importance of the partnership that is highlighted with this legislation, a partnership between this legislative body and our colleagues in the National Institutes of Health and work that we should be doing together on behalf of the American people.

As Dr. Francis Collins and his wonderful staff of the Genome Project have taught us, the identification of genetic markers for disease is one of the most remarkable accomplishments scientists have ever made. Being able to identify risks for certain conditions holds such great promise for our ability to identify and practice greater preventive health care in this country. The importance of preventive care to our well-being and our optimum health can never be overemphasized.

However, as with almost all great scientific advancements, we have also opened the door to a whole slew of unintended consequences. Preventive health care can be put at risk if patients decline genetic testing for fear of insurance or employment discrimination. We need to work together, and we will, on ways to promote ethical genetic testing, coupled with appropriate privacy protections and with measures such as we are doing today to prevent discrimination.

This bill accomplishes these goals, and I am extremely proud to support it. I urge all of my colleagues to vote ''yes'' on its passage.

Mrs. BIGGERT. Madam Speaker, I have no further speakers, so I will yield myself the balance of my time to close.

Madam Speaker, this bill has been a bipartisan bill. It has got 95 Republicans and 125 Democrats. GINA passed the Education and Labor Committee, Energy and Commerce Committee and the Ways and Means Committee by voice vote. I think that GINA is needed to maintain high-quality genetic research and clinical trials at NIH. It passed the Senate last year 98–0, and the last Congress was a strong SAP for them, so when this goes to conference we will see what happens this year.

Let me just say that Newt Gingrich said to not have this bill is to cripple our ability to save lives. I would like to enter into the RECORD a statement of his in the Washington Times, and just to quote a little bit from it.

''Without protection from genetic discrimination, we risk missing out on the promise of personalized medicine. But if we apply time-honored principles of fairness and justice to the genome era, we can grant the American public the gift of better informed patients, better equipped providers, an enhanced biotech industry, improved health and lives saved.

''Let's not withhold this gift any longer. Let's empower all Americans to embrace the possibilities of personalized medicine for better health, and let's commend the forward-thinking bipartisanship of the 110th Congress that has brought us to the threshold of a world where Americans can embrace personalized medicine without fear.

''Our health, and that of our children and grandchildren, depends on it.''

Let me just say that this bill had to go through three committees, and that is not easy, Education and Labor, Ways and Means and the Energy and Commerce. That is no small feat. I really thank Chairman SLAUGHTER for all that she did to make sure that this went through, and all the time she has spent on this. It has been a great honor to work with her.

Again, let me thank the chairmen of these committees and the ranking members for the time that they put in, and all the Members that came down to speak today and all the Members that supported this as cosponsors.

To go through the three committees, everybody knows something about this place, but everybody wants to put their stamp on it. To come out with a bill we can all agree on, and, as people said, they have some things they would still like to put in, but I think being able to manage all of the different committees, and what was their jurisdiction and what maybe they thought was their jurisdiction but really was the jurisdiction of another committee, makes it a very interesting process.

And I think we all learned about how this type of bill works. It is a very technical bill, and that is why we thank all of the 200 groups, at least 200 groups that have worked on this bill and been able to give us the technical information that we needed to make this something that is going to save lives. It is going to lower costs and it also is going to find the cures for so many of these diseases and disorders, because people will be willing to go into clinical trials. So I congratulate all of the people that participated.

Madam Speaker, I include the article by Newt Gingrich for the RECORD.

CONGRESS OF THE UNITED STATES,
Washington, DC.

Why does Newt Gingrich Support GINA?

DEAR REPUBLICAN COLLEAGUE, We wanted to draw your attention to this op-ed by Newt Gingrich supporting H.R. 493, the Genetic Information Nondiscrimination Act. It appeared in the Washington Times on April 11, 2007. We urge you to vote ''yes'' when this legislation comes to the floor.

Sincerely,

JUDY BIGGERT,
Member of Congress.

GREG WALDEN,
Member of Congress.

[From the Washington Times]

HEALTH CARE RE-GIFTING LEGISLATION RIGHTLY AVOIDS GENETIC DISCRIMINATION

(By Newt Gingrich and Robert Egge)

Protecting every American from genetic discrimination is a long overdue gift to the nation. After 12 years of debate, Congress is at last poised to deliver this gift.

The sequencing of the human genome is leading to revolutionary advances in our understanding of the causes of disease. Four years after completing the Human Genome Project, we are witnessing the dawn of the era of personalized medicine.

The discovery of genetic variants that contribute to risk of common diseases will continue to grow rapidly during the next few years, offering better opportunities for individualized, preventive medicine. Already,

health-care providers can test for DNA patterns that predispose some of us to cancer, and soon this will be possible for diabetes, heart disease and other common diseases. Doctors will also soon be able to prescribe medicines and treatments based on our own individual genetics. Pharmacogenomics will better equip doctors to give the right medicine to the right patient at the right dose and, by avoiding giving treatments to patients who would suffer a negative reaction, save both lives and money.

The arrival of this new era, however, is being delayed by widespread public fear of genetic discrimination. Individuals worry that genetic predisposition to a particular disease will deny them access to health care of employment. These fears are not unwarranted. This issue affects all of us; there are no perfect specimens at the DNA level. Each of us carries gene variants that increase risk of developing one disease or another, each of us is at risk for genetic discrimination.

A recent independent survey conducted by the Genetics and Public Policy Center showed that more than 90 percent of Americans support the use of genetic testing by doctors to identify a person's risk for future disease. But nearly all Americans (93 percent) believe that health insurers should not be able to use genetic test results about increased risk of future disease to deny or limit insurance or charge higher prices. Similarly, 93 percent felt that employers should not be able to use genetic information to make hiring or promotion decisions.

Not only do these fears discourage Americans from using genetic tests that could personally benefit them, but they risk delaying the arrival of new medical breakthroughs. At the National Institutes of Health, fear of genetic discrimination is the most commonly cited reason for declining to participate in research that includes potentially lifesaving genetic tests for cancer; over one-third of eligible participants decline on this basis.

In the past, lawmakers have come close to providing Americans the protections they seek. Two years ago, with the support of the Bush administration, the Senate passed the Genetic Information Nondiscrimination Act of 2005 by a 98–0 vote. Progress in the House was slower. Despite 244 cosponsors, including 117 Republicans, the bill never came to a House vote in the 109th Congress.

In this Congress, the 110th, House and the Senate champions have taken up genetic nondiscrimination with even greater determination. All the House and Senate committees involved have already held hearings on the bill, and the leadership has signaled a commitment to moving S 358 and HR 493 to a vote. President Bush has strongly restated his support. The time is right to put the needed protections in place.

Without protection from genetic discrimination, we risk missing out on the promise of personalized medicine. But if we apply time-honored principles of fairness and justice to the genome era, we can grant the American public the gift of better-informed patients, better-equipped providers, an enhanced biotech industry, improved health and lives saved.

Let's not withhold the gift any longer. Let's empower all Americans to embrace the possibilities of personalized medicine for better health. And let's commend the forward-thinking bipartisanship of the 110th Congress that has brought us to the threshold of a world where Americans can embrace personalized medicine without fear.

Our health, and that of our children and grandchildren, depends on it.

Madam Speaker, I yield back the balance of my time.

Mr. GEORGE MILLER of California. Madam Speaker, I yield myself the balance of my time.

Madam Speaker, I would just want to join in thanking all of the Chairs and the ranking members of the three committees and the subcommittees, and clearly LOUISE SLAUGHTER, our colleague from New York, who has worked so hard on this legislation so very long, and JUDY BIGGERT also, and ANNA ESHOO.

Given the importance of this legislation, it is hard to believe it has been stuck in the Congress of the United States for 10 years, but it has been. Maybe our reporting it today off of the floor is a tribute to a fresh start.

This is a very, very important piece of legislation to the health of the Nation and to the world. The advocacy of LOUISE SLAUGHTER has reminded us almost every day in those 10 years what we were missing by not passing this legislation and making it available so that we could get on with the wonderful discovery and the wonderful help that could be provided to individuals, to their families and to our communities. And the National Institutes of Health is to be commended, with all of the assistance they provided and all of the information provided to this Congress.

With that, I also want to thank the staffs of the three committees on both sides of the aisle for all of their work. They put in a lot of hours to get this resolved so that we could come to the floor and work over the differences that were there sometimes between the committees.

Mr. GENE GREEN of Texas. Madam Speaker, I rise in support of H.R. 493, the Genetic Information Non-Discrimination Act.

The sequencing of the human genome was an amazing scientific advancement, and has contributed to the rise of genetic testing to inform patients of their proclivity for disease. Thanks to genetic testing, individuals with a risk of an illness can take precautionary steps ahead of time to ward off disease, which will contribute to lower health care costs over time.

As we take advantage of this scientific progress, however, it is critical that we protect individuals from any discrimination that could result from the information these tests reveal. The results should not be used by health insurers to deny anyone coverage or increase their premiums because of a pre-disposition to a certain disease. Likewise, the results should not be used by employers to discriminate against employees based on their predisposition to disease.

I am proud to be a co-sponsor of this legislation, which our colleagues Ms. SLAUGHTER and Mrs. BIGGERT have been working on for over a decade now. The health care marketplace has changed significantly since the bill's original introduction, and important changes were made to the bill during the 108th Congress to refine the bill's definitions and scope.

During the Energy and Commerce Committee's consideration of the bill, we learned about one segment of the health care marketplace that was excluded from the bill's protections—the long-term care insurance market. The bill sponsors and supporters all agreed that this bill was never intended to regulate the long-term care insurance market, and I understand that current statute treats long-term care insurance differently.

Regardless of the bill's original intent, the fact remains that the long-term care exclusion in this bill would allow a long-term care insurer to discriminate against an individual on the basis of genetic information. If an individual determines that she is at high-risk for developing Alzheimer's disease, the next obvious step is to plan her future care for Alzheimer's, including the purchase of long-term care insurance. Despite all of the good intentions in this legislation, the bill would allow long-term care insurance underwriters to refuse to cover her or charge her higher premiums for a disease she has yet to develop and may never develop.

As a Congress that continues to encourage Americans to plan for their future, we should ensure that future legislation extends the patient protections inherent in this bill to consumers who want to plan for their future and purchase long-term care. With that, Madam Speaker, I am pleased to support this important legislation and encourage my colleagues to vote for its passage.

Mr. PAUL. Madam Speaker, the supporters of H.R. 493, the Genetic Information Nondiscrimination Act, are right to be concerned over the possibility that third parties, such as the government or potential employers, will access an individual's genetic information without consent, and use that information to deny an individual health insurance or other benefits. I have long advocated repealing government laws and polices that allow third parties to access personal information. For example, I have worked to repeal the provision of Federal law giving the Federal Government the power to assign every American a ''unique medical health identifier.'' I also support repealing the phony ''medical privacy'' regulations that give law enforcement officials and state-favored private interests the right to access medical records at will.

Because of the Federal Government's poor record in protecting privacy, I do not believe the best way to address concerns about the misuse of genetic information is through intrusive Federal legislation. Uniform Federal mandates are a clumsy and ineffective way to deal with problems such as employers making hiring decisions on the basis of a potential employee's genetic profile. Imposing Federal mandates on private businesses merely raises the costs of doing business and thus reduces the employment opportunities for all citizens. A much better way to eliminate irrational discrimination is to rely on state and local regulation. Unlike the Federal Government, states and localities are able to tailor their regulations to fit the needs of their particular populaces. I would remind my colleagues that 34 states currently ban genetic discrimination in employment, while 46 states forbid health insurers from engaging in genetic discrimination. Clearly, the states are capable of addressing this issue without interference from Washington. My colleagues should also remember that Congress has no constitutional authority to forbid private sector employers from making hiring or other employment decisions on the basis of genetic information.

The best way to address the sponsors of H.R. 493's legitimate concerns is to put individuals back in control of the health care dollar. When individuals control the health care dollar they, not their employers, insurance

companies or Health Maintenance Organizations, can make all health care decisions, including whether or not to share individual genetic histories with a potential employer, insurer, or other third party. Therefore, instead of creating more Federal regulations and bureaucracies, my colleagues should increase individual control of health care by passing legislation expanding Health Savings Accounts and individual health care tax credits and deductions.

Mr. HOLT. Madam Speaker, I rise today in strong support of H.R. 493, the Genetic Non-Discrimination Act (GINA). As a cosponsor of this important legislation since I first came to Congress, I am delighted that it is finally being considered by the House of Representatives.

As humans, we have a genetic destiny that we cannot control. The genes we are born with are the genes we will die with, and it is wrong for any employer to fire, refuse to hire, or deny insurance to an employee based on that individual's genetic composition. It is unconscionable for employers to require their employees to submit to a genetic test or to secretly obtain genetic information, only to use the genetic information against the employees.

The Human Genome Project was created to provide a genetic map of the human body to aid the scientific and medical communities in their fight against some of the most insidious diseases and afflictions suffered by humanity. It is a great irony and a tragedy that this research is now being used as justification to fire or refuse to hire employees who have no control over their genetic destinies.

As a member of the Education and Labor Committee, I participated in hearings on GINA which highlighted the existing loopholes in federal and state laws protecting an individual's health information. Lacking a strong and clear national law prohibiting genetic discrimination, employees have been fired or denied insurance coverage based on this most personal of information.

Today, the House will act to end genetic discrimination in hiring and firing decisions. GINA will protect prospective and current employees from discrimination based on a genetic predisposition regardless of what state they live in. It will provide strong protections to those individuals who may suffer from actual genetic discrimination now and in the future. This legislation would pose a nominal cost to employers, but provide priceless protections for American workers and peace of mind for their families.

New Jersey, along with 32 other states, already prohibits genetic discrimination in decisions on hiring, firing, or benefits. However, only 25 states prohibit employers from requiring genetic information from their employees. Worse yet, only 10 states prohibit employers from obtaining genetic information or genetic tests of employees through any means.

This vital legislation is supported by more than 200 groups and associations including: the Hereditary Disease Foundation, the American Association for the Advancement of Science, the American Jewish Congress, the American Association of People with Disabilities, the American Society of Human Genetics, the March of Dimes, the NAACP, the National Fragile X Foundation, the National Hemophilia Foundation, the National Council of La Raza, Citizens for Quality Sickle Cell Care, the Coalition for Genetic Fairness, the Cornelia de Lange Syndrome Foundation, the Cystic Fibrosis Foundation, The National Workrights Institute, the Religious Action Center for Reform Judaism, Rett Syndrome Research Foundation, the Spina Bifida Association of America and many others.

Madam Speaker, it is long past time for the Genetic Non-Discrimination Act to become law. I urge my colleagues to vote for this important legislation, which will protect the rights of American workers and their families.

Mr. STARK. Madame Speaker, I am pleased that we are finally passing the Genetic Information Nondiscrimination Act.

This is a bill that has languished in Congress more than a decade. The Senate has twice passed earlier versions of this bill with unanimous votes, but the House has always blocked action.

It's good to see that times have changed. Members from both sides of the aisle—as well as the President support the bill before us.

As I hope most of you know, this bill does something very simple, but something very important as well. It protects people's genetic information and family history from being used by health plans or employers to discriminate against them. Enactment of this law is critical to protect patients and for genetic science to advance.

Recent breakthroughs in medical science have made genetic testing available to more patients, but with these breakthroughs comes the fear that patients may be discriminated against by insurance companies and/or employers if they are pre-disposed to suffer from a disease or other condition.

We are here today to make sure that patients can undergo genetic tests which could help with treatments or cures without fear that the results will keep them from affordable, reliable health care.

This legislation is an overdue and important step toward ensuring that our laws governing patient rights are as current as the latest medical technology.

I urge strong support for this bill.

Mr. SHAYS. Madam Speaker, as an original cosponsor of H.R. 493, I rise in strong support of this legislation and am grateful we are finally considering it. The objective of this bill is simple: preventing both health insurance companies and employers from using genetic information to discriminate against individuals.

In the past decade, science has made remarkable advances on the human genome. Genetic tests are already available to measure an individual's likelihood of developing specific diseases. In fact, soon every individual will have a genetic profile available that predicts the diseases for which they are more at risk, and what side effects to which they are more susceptible. These genetic advances will make health care pre-emptive and ultimately save the health care system—and consumers—money.

While these advances hold amazing potential, they also hold potential for abuse. For example, health insurance companies could charge higher rates—or even deny coverage—to individuals who are determined to be at higher risk for certain disease or illnesses. Similarly, employers could screen applicants for certain positions based on their genetic make-up to get the individuals least likely to develop diseases.

Our laws need to keep pace with medical advancement. If Americans are afraid of retribution from their health insurance company or from their employer if they get genetic testing done, none of the medical advances that are possible will be achieved. We simply must move forward in this critical area of science, which is why I urge passage of this legislation.

Mr. GEORGE MILLER of California. Madam Speaker, with that, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. GEORGE MILLER) that the House suspend the rules and pass the bill, H.R. 493, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

Mr. GEORGE MILLER of California. Madam Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this question will be postponed.

COMMUNICATION FROM THE HONORABLE JOHN E. PETERSON, MEMBER OF CONGRESS

The SPEAKER pro tempore laid before the House the following communication from the Honorable JOHN E. PETERSON, Member of Congress:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, April 25, 2007.

Hon. NANCY PELOSI,
Speaker, of the House of Representatives, Washington, DC.

DEAR MADAM SPEAKER: This is to formally notify you, pursuant to Rule VIII of the Rules of the House of Representatives, I have been served with a judicial subpoena for documents issued by the United States District Court for the Middle District of Pennsylvania.

After consulting with the Office of General Counsel, I have determined that compliance with the subpoena is consistent with the privileges and rights of the House.

Sincerely,

JOHN E. PETERSON,
Member of Congress.

PROVIDING FOR CONSIDERATION OF H.R. 1332, SMALL BUSINESS LENDING IMPROVEMENTS ACT OF 2007

Mr. ARCURI. Madam Speaker, by direction of the Committee on Rules, I call up House Resolution 330 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 330

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 2(b) of rule XVIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 1332) to improve the access to capital programs of the Small Business Administration, and for other purposes. The first reading of the bill shall be dispensed with. All points of order against consideration of the bill are waived