

108TH CONGRESS
1ST SESSION

S. 16

To protect the civil rights of all Americans, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 7, 2003

Mr. DASCHLE (for himself, Mr. LEAHY, Mr. KENNEDY, Mr. BIDEN, Mr. SCHUMER, Mr. DURBIN, Mr. EDWARDS, Mr. AKAKA, Mrs. CLINTON, Mr. CORZINE, Mr. DAYTON, Mr. HARKIN, Ms. LANDRIEU, Mr. LEVIN, Mr. LIEBERMAN, Ms. MIKULSKI, Mrs. MURRAY, Mr. ROCKEFELLER, Mr. SARBANES, Ms. STABENOW, Mr. LAUTENBERG, and Mr. REID) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To protect the civil rights of all Americans, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Equal Rights and Equal Dignity for Americans Act of
6 2003”.

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

Sec. 1. Short title; table of contents.

TITLE I—LOCAL LAW ENFORCEMENT ENHANCEMENT ACT

- Sec. 101. Short title.
 Sec. 102. Findings.
 Sec. 103. Definition of hate crime.
 Sec. 104. Support for criminal investigations and prosecutions by State and local law enforcement officials.
 Sec. 105. Grant program.
 Sec. 106. Authorization for additional personnel to assist State and local law enforcement.
 Sec. 107. Prohibition of certain hate crime acts.
 Sec. 108. Duties of Federal Sentencing Commission.
 Sec. 109. Statistics.
 Sec. 110. Severability.

TITLE II—INCREASE IN FUNDING FOR ENFORCING CIVIL RIGHTS LAWS

Sec. 201. Increase in funding.

TITLE III—SUPPORTING INDIGENT DEFENSE

- Sec. 301. Findings.
 Sec. 302. Authorization of appropriations.

TITLE IV—INDIAN TRUST ASSET AND TRUST FUND MANAGEMENT AND REFORM

- Sec. 401. Short title.
 Sec. 402. Findings.
 Sec. 403. Definitions.
 Sec. 404. Responsibilities of Secretary.
 Sec. 405. Indian participation in trust fund activities.
 Sec. 406. Deputy Secretary for Trust Management and Reform.
 Sec. 407. Advisory board and Tribal Task Force.
 Sec. 408. Regulations.
 Sec. 409. No effect on certain judicial decision.

TITLE V—RACIAL PROFILING

Sec. 501. Sense of the Senate on racial profiling.

TITLE VI—PAYCHECK FAIRNESS

- Sec. 601. Short title.
 Sec. 602. Findings.
 Sec. 603. Enhanced enforcement of equal pay requirements.
 Sec. 604. Training.
 Sec. 605. Research, education, and outreach.
 Sec. 606. Technical assistance and employer recognition program.
 Sec. 607. Establishment of the National Award for Pay Equity in the Workplace.
 Sec. 608. Collection of pay information by the Equal Employment Opportunity Commission.
 Sec. 609. Authorization of appropriations.

TITLE VII—EMPLOYMENT NON-DISCRIMINATION

- Sec. 701. Short title.
- Sec. 702. Purposes.
- Sec. 703. Definitions.
- Sec. 704. Discrimination prohibited.
- Sec. 705. Retaliation prohibited.
- Sec. 706. Benefits.
- Sec. 707. Collection of statistics prohibited.
- Sec. 708. Quotas and preferential treatment prohibited.
- Sec. 709. Religious exemption.
- Sec. 710. Nonapplication to members of the Armed Forces; veterans' preferences.
- Sec. 711. Construction.
- Sec. 712. Enforcement.
- Sec. 713. State and Federal immunity.
- Sec. 714. Attorneys' fees.
- Sec. 715. Posting notices.
- Sec. 716. Regulations.
- Sec. 717. Relationship to other laws.
- Sec. 718. Severability.
- Sec. 719. Effective date.

TITLE VIII—GENETIC NONDISCRIMINATION

- Sec. 801. Short title.

Subtitle A—Prohibition of Health Insurance Discrimination on the Basis of
Protected Genetic Information

- Sec. 811. Amendments to Employee Retirement Income Security Act of 1974.
- Sec. 812. Amendments to the Public Health Service Act.
- Sec. 813. Amendments to Internal Revenue Code of 1986.
- Sec. 814. Amendments to title XVIII of the Social Security Act relating to MEDIGAP.

Subtitle B—Prohibition of Employment Discrimination on the Basis of
Protected Genetic Information

- Sec. 821. Definitions.
- Sec. 822. Limitations with respect to definition.
- Sec. 823. Employer practices.
- Sec. 824. Employment agency practices.
- Sec. 825. Labor organization practices.
- Sec. 826. Training programs.
- Sec. 827. Maintenance and disclosure of protected genetic information.
- Sec. 828. Civil action.
- Sec. 829. Construction.
- Sec. 830. Authorization of appropriations.
- Sec. 831. Effective date.

Subtitle C—Miscellaneous Provisions

- Sec. 841. Severability.

TITLE IX—MEDICAL PRIVACY

- Sec. 901. Short title.

Sec. 902. Purpose.
 Sec. 903. Restoration of privacy protections.
 Sec. 904. Definitions; effective date.

TITLE X—PROTECTING AMERICANS’ PRIVACY

Sec. 1001. Use of Department of Defense personnel or funds to collect intelligence or law enforcement information on United States citizens inside the United States.

TITLE XI—ELECTION REFORM

Sec. 1101. Reform.

1 **TITLE I—LOCAL LAW ENFORCE-** 2 **MENT ENHANCEMENT ACT**

3 **SEC. 101. SHORT TITLE.**

4 This title may be cited as the “Local Law Enforce-
 5 ment Enhancement Act of 2003”.

6 **SEC. 102. FINDINGS.**

7 Congress makes the following findings:

8 (1) The incidence of violence motivated by the
 9 actual or perceived race, color, religion, national ori-
 10 gin, gender, sexual orientation, or disability of the
 11 victim poses a serious national problem.

12 (2) Such violence disrupts the tranquility and
 13 safety of communities and is deeply divisive.

14 (3) State and local authorities are now and will
 15 continue to be responsible for prosecuting the over-
 16 whelming majority of violent crimes in the United
 17 States, including violent crimes motivated by bias.
 18 These authorities can carry out their responsibilities
 19 more effectively with greater Federal assistance.

1 (4) Existing Federal law is inadequate to ad-
2 dress this problem.

3 (5) The prominent characteristic of a violent
4 crime motivated by bias is that it devastates not just
5 the actual victim and the family and friends of the
6 victim, but frequently savages the community shar-
7 ing the traits that caused the victim to be selected.

8 (6) Such violence substantially affects interstate
9 commerce in many ways, including—

10 (A) by impeding the movement of members
11 of targeted groups and forcing such members to
12 move across State lines to escape the incidence
13 or risk of such violence; and

14 (B) by preventing members of targeted
15 groups from purchasing goods and services, ob-
16 taining or sustaining employment, or partici-
17 pating in other commercial activity.

18 (7) Perpetrators cross State lines to commit
19 such violence.

20 (8) Channels, facilities, and instrumentalities of
21 interstate commerce are used to facilitate the com-
22 mission of such violence.

23 (9) Such violence is committed using articles
24 that have traveled in interstate commerce.

1 (10) For generations, the institutions of slavery
2 and involuntary servitude were defined by the race,
3 color, and ancestry of those held in bondage. Slavery
4 and involuntary servitude were enforced, both prior
5 to and after the adoption of the 13th amendment
6 to the Constitution of the United States, through
7 widespread public and private violence directed at
8 persons because of their race, color, or ancestry, or
9 perceived race, color, or ancestry. Accordingly, elimi-
10 nating racially motivated violence is an important
11 means of eliminating, to the extent possible, the
12 badges, incidents, and relics of slavery and involun-
13 tary servitude.

14 (11) Both at the time when the 13th, 14th, and
15 15th amendments to the Constitution of the United
16 States were adopted, and continuing to date, mem-
17 bers of certain religious and national origin groups
18 were and are perceived to be distinct “races”. Thus,
19 in order to eliminate, to the extent possible, the
20 badges, incidents, and relics of slavery, it is nec-
21 essary to prohibit assaults on the basis of real or
22 perceived religions or national origins, at least to the
23 extent such religions or national origins were re-
24 garded as races at the time of the adoption of the

1 13th, 14th, and 15th amendments to the Constitu-
2 tion of the United States.

3 (12) Federal jurisdiction over certain violent
4 crimes motivated by bias enables Federal, State, and
5 local authorities to work together as partners in the
6 investigation and prosecution of such crimes.

7 (13) The problem of crimes motivated by bias
8 is sufficiently serious, widespread, and interstate in
9 nature as to warrant Federal assistance to States
10 and local jurisdictions.

11 **SEC. 103. DEFINITION OF HATE CRIME.**

12 In this title, the term “hate crime” has the same
13 meaning as in section 280003(a) of the Violent Crime
14 Control and Law Enforcement Act of 1994 (28 U.S.C.
15 994 note).

16 **SEC. 104. SUPPORT FOR CRIMINAL INVESTIGATIONS AND**
17 **PROSECUTIONS BY STATE AND LOCAL LAW**
18 **ENFORCEMENT OFFICIALS.**

19 (a) ASSISTANCE OTHER THAN FINANCIAL ASSIST-
20 ANCE.—

21 (1) IN GENERAL.—At the request of a law en-
22 forcement official of a State or Indian tribe, the At-
23 torney General may provide technical, forensic, pros-
24 ecutorial, or any other form of assistance in the

1 criminal investigation or prosecution of any crime
2 that—

3 (A) constitutes a crime of violence (as de-
4 fined in section 16 of title 18, United States
5 Code);

6 (B) constitutes a felony under the laws of
7 the State or Indian tribe; and

8 (C) is motivated by prejudice based on the
9 race, color, religion, national origin, gender,
10 sexual orientation, or disability of the victim, or
11 is a violation of the hate crime laws of the State
12 or Indian tribe.

13 (2) PRIORITY.—In providing assistance under
14 paragraph (1), the Attorney General shall give pri-
15 ority to crimes committed by offenders who have
16 committed crimes in more than 1 State and to rural
17 jurisdictions that have difficulty covering the ex-
18 traordinary expenses relating to the investigation or
19 prosecution of the crime.

20 (b) GRANTS.—

21 (1) IN GENERAL.—The Attorney General may
22 award grants to assist State, local, and Indian law
23 enforcement officials with the extraordinary expenses
24 associated with the investigation and prosecution of
25 hate crimes.

1 (2) OFFICE OF JUSTICE PROGRAMS.—In imple-
2 menting the grant program, the Office of Justice
3 Programs shall work closely with the funded juris-
4 dictions to ensure that the concerns and needs of all
5 affected parties, including community groups and
6 schools, colleges, and universities, are addressed
7 through the local infrastructure developed under the
8 grants.

9 (3) APPLICATION.—

10 (A) IN GENERAL.—Each State that desires
11 a grant under this subsection shall submit an
12 application to the Attorney General at such
13 time, in such manner, and accompanied by or
14 containing such information as the Attorney
15 General shall reasonably require.

16 (B) DATE FOR SUBMISSION.—Applications
17 submitted pursuant to subparagraph (A) shall
18 be submitted during the 60-day period begin-
19 ning on a date that the Attorney General shall
20 prescribe.

21 (C) REQUIREMENTS.—A State or political
22 subdivision of a State or tribal official applying
23 for assistance under this subsection shall—

24 (i) describe the extraordinary pur-
25 poses for which the grant is needed;

1 (ii) certify that the State, political
2 subdivision, or Indian tribe lacks the re-
3 sources necessary to investigate or pros-
4 ecute the hate crime;

5 (iii) demonstrate that, in developing a
6 plan to implement the grant, the State, po-
7 litical subdivision, or tribal official has con-
8 sulted and coordinated with nonprofit, non-
9 governmental victim services programs
10 that have experience in providing services
11 to victims of hate crimes; and

12 (iv) certify that any Federal funds re-
13 ceived under this subsection will be used to
14 supplement, not supplant, non-Federal
15 funds that would otherwise be available for
16 activities funded under this subsection.

17 (4) DEADLINE.—An application for a grant
18 under this subsection shall be approved or dis-
19 approved by the Attorney General not later than 30
20 business days after the date on which the Attorney
21 General receives the application.

22 (5) GRANT AMOUNT.—A grant under this sub-
23 section shall not exceed \$100,000 for any single ju-
24 risdiction within a 1-year period.

1 (6) REPORT.—Not later than December 31,
2 2004, the Attorney General shall submit to Congress
3 a report describing the applications submitted for
4 grants under this subsection, the award of such
5 grants, and the purposes for which the grant
6 amounts were expended.

7 (7) AUTHORIZATION OF APPROPRIATIONS.—
8 There is authorized to be appropriated \$5,000,000
9 to carry out this subsection for each of fiscal years
10 2004 and 2005.

11 **SEC. 105. GRANT PROGRAM.**

12 (a) AUTHORITY TO MAKE GRANTS.—The Office of
13 Justice Programs of the Department of Justice shall
14 award grants, in accordance with such regulations as the
15 Attorney General may prescribe, to State and local pro-
16 grams designed to combat hate crimes committed by juve-
17 niles, including programs to train local law enforcement
18 officers in identifying, investigating, prosecuting, and pre-
19 venting hate crimes.

20 (b) AUTHORIZATION OF APPROPRIATIONS.—There
21 are authorized to be appropriated such sums as may be
22 necessary to carry out this section.

1 **SEC. 106. AUTHORIZATION FOR ADDITIONAL PERSONNEL**
 2 **TO ASSIST STATE AND LOCAL LAW ENFORCE-**
 3 **MENT.**

4 There are authorized to be appropriated to the De-
 5 partment of the Treasury and the Department of Justice,
 6 including the Community Relations Service, for fiscal
 7 years 2004, 2005, and 2006 such sums as are necessary
 8 to increase the number of personnel to prevent and re-
 9 spond to alleged violations of section 249 of title 18,
 10 United States Code, as added by section 107.

11 **SEC. 107. PROHIBITION OF CERTAIN HATE CRIME ACTS.**

12 (a) IN GENERAL.—Chapter 13 of title 18, United
 13 States Code, is amended by adding at the end the fol-
 14 lowing:

15 **“§ 249. Hate crime acts**

16 “(a) IN GENERAL.—

17 “(1) OFFENSES INVOLVING ACTUAL OR PER-
 18 CEIVED RACE, COLOR, RELIGION, OR NATIONAL ORI-
 19 GIN.—Whoever, whether or not acting under color of
 20 law, willfully causes bodily injury to any person or,
 21 through the use of fire, a firearm, or an explosive
 22 or incendiary device, attempts to cause bodily injury
 23 to any person, because of the actual or perceived
 24 race, color, religion, or national origin of any per-
 25 son—

1 “(A) shall be imprisoned not more than 10
2 years, fined in accordance with this title, or
3 both; and

4 “(B) shall be imprisoned for any term of
5 years or for life, fined in accordance with this
6 title, or both, if—

7 “(i) death results from the offense; or

8 “(ii) the offense includes kidnaping or
9 an attempt to kidnap, aggravated sexual
10 abuse or an attempt to commit aggravated
11 sexual abuse, or an attempt to kill.

12 “(2) OFFENSES INVOLVING ACTUAL OR PER-
13 CEIVED RELIGION, NATIONAL ORIGIN, GENDER, SEX-
14 UAL ORIENTATION, OR DISABILITY.—

15 “(A) IN GENERAL.—Whoever, whether or
16 not acting under color of law, in any cir-
17 cumstance described in subparagraph (B), will-
18 fully causes bodily injury to any person or,
19 through the use of fire, a firearm, or an explo-
20 sive or incendiary device, attempts to cause
21 bodily injury to any person, because of the ac-
22 tual or perceived religion, national origin, gen-
23 der, sexual orientation, or disability of any per-
24 son—

1 “(i) shall be imprisoned not more
2 than 10 years, fined in accordance with
3 this title, or both; and

4 “(ii) shall be imprisoned for any term
5 of years or for life, fined in accordance
6 with this title, or both, if—

7 “(I) death results from the of-
8 fense; or

9 “(II) the offense includes kid-
10 napping or an attempt to kidnap, ag-
11 gravated sexual abuse or an attempt
12 to commit aggravated sexual abuse, or
13 an attempt to kill.

14 “(B) CIRCUMSTANCES DESCRIBED.—For
15 purposes of subparagraph (A), the cir-
16 cumstances described in this subparagraph are
17 that—

18 “(i) the conduct described in subpara-
19 graph (A) occurs during the course of, or
20 as the result of, the travel of the defendant
21 or the victim—

22 “(I) across a State line or na-
23 tional border; or

1 “(II) using a channel, facility, or
2 instrumentality of interstate or for-
3 eign commerce;

4 “(ii) the defendant uses a channel, fa-
5 cility, or instrumentality of interstate or
6 foreign commerce in connection with the
7 conduct described in subparagraph (A);

8 “(iii) in connection with the conduct
9 described in subparagraph (A), the defend-
10 ant employs a firearm, explosive or incen-
11 diary device, or other weapon that has
12 traveled in interstate or foreign commerce;
13 or

14 “(iv) the conduct described in sub-
15 paragraph (A)—

16 “(I) interferes with commercial
17 or other economic activity in which
18 the victim is engaged at the time of
19 the conduct; or

20 “(II) otherwise affects interstate
21 or foreign commerce.

22 “(b) CERTIFICATION REQUIREMENT.—No prosecu-
23 tion of any offense described in this subsection may be
24 undertaken by the United States, except under the certifi-
25 cation in writing of the Attorney General, the Deputy At-

1 torney General, the Associate Attorney General, or any
2 Assistant Attorney General specially designated by the At-
3 torney General that—

4 “(1) he or she has reasonable cause to believe
5 that the actual or perceived race, color, religion, na-
6 tional origin, gender, sexual orientation, or disability
7 of any person was a motivating factor underlying the
8 alleged conduct of the defendant; and

9 “(2) he or his designee or she or her designee
10 has consulted with State or local law enforcement of-
11 ficials regarding the prosecution and determined
12 that—

13 “(A) the State does not have jurisdiction
14 or does not intend to exercise jurisdiction;

15 “(B) the State has requested that the Fed-
16 eral Government assume jurisdiction;

17 “(C) the State does not object to the Fed-
18 eral Government assuming jurisdiction; or

19 “(D) the verdict or sentence obtained pur-
20 suant to State charges left demonstratively
21 unvindicated the Federal interest in eradicating
22 bias-motivated violence.

23 “(c) DEFINITIONS.—In this section—

1 “(1) the term ‘explosive or incendiary device’
2 has the meaning given the term in section 232 of
3 this title; and

4 “(2) the term ‘firearm’ has the meaning given
5 the term in section 921(a) of this title.”.

6 (b) **TECHNICAL AND CONFORMING AMENDMENT.**—
7 The analysis for chapter 13 of title 18, United States
8 Code, is amended by adding at the end the following:

 “249. Hate crime acts.”.

9 **SEC. 108. DUTIES OF FEDERAL SENTENCING COMMISSION.**

10 (a) **AMENDMENT OF FEDERAL SENTENCING GUIDE-**
11 **LINES.**—Pursuant to the authority provided under section
12 994 of title 28, United States Code, the United States
13 Sentencing Commission shall study the issue of adult re-
14 cruitment of juveniles to commit hate crimes and shall,
15 if appropriate, amend the Federal sentencing guidelines
16 to provide sentencing enhancements (in addition to the
17 sentencing enhancement provided for the use of a minor
18 during the commission of an offense) for adult defendants
19 who recruit juveniles to assist in the commission of hate
20 crimes.

21 (b) **CONSISTENCY WITH OTHER GUIDELINES.**—In
22 carrying out this section, the United States Sentencing
23 Commission shall—

24 (1) ensure that there is reasonable consistency
25 with other Federal sentencing guidelines; and

1 (2) avoid duplicative punishments for substan-
2 tially the same offense.

3 **SEC. 109. STATISTICS.**

4 Subsection (b)(1) of the first section of the Hate
5 Crimes Statistics Act (28 U.S.C. 534 note) is amended
6 by inserting “gender,” after “race,”.

7 **SEC. 110. SEVERABILITY.**

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

15 **TITLE II—INCREASE IN FUNDING**
16 **FOR ENFORCING CIVIL**
17 **RIGHTS LAWS**

18 **SEC. 201. INCREASE IN FUNDING.**

19 Notwithstanding any other provision of law, there are
20 authorized to be appropriated for fiscal year 2004—

21 (1) to the Equal Employment Opportunity
22 Commission, to carry out the activities of the Com-
23 mission, \$339,691,800;

1 (2) to the Civil Rights Division of the Depart-
2 ment of Justice, to carry out the activities of the Di-
3 vision, \$110,360,000;

4 (3) to the Office of Civil Rights of the Depart-
5 ment of Education, to carry out the activities of the
6 Office, \$97,760,000; and

7 (4) to the Office of Federal Contract Compli-
8 ance Programs of the Department of Labor, to carry
9 out the activities of the Office, \$81,421,200.

10 **TITLE III—SUPPORTING** 11 **INDIGENT DEFENSE**

12 **SEC. 301. FINDINGS.**

13 Congress finds the following:

14 (1) It is important to provide equal access to
15 the system of justice in the United States for all in-
16 dividuals, regardless of economic stature.

17 (2) The Legal Services Corporation provides
18 high quality legal assistance for persons who would
19 otherwise be unable to afford legal counsel.

20 (3) The programs of the Legal Services Cor-
21 poration serve clients with cases concerning housing,
22 family law, income maintenance, consumer issues,
23 and employment.

24 (4) For just under a decade the Federal re-
25 sources available to the Legal Services Corporation

1 have been inadequate. Nearly half of all people who
2 applied for assistance from local Legal Services Cor-
3 poration programs have been turned away in recent
4 years.

5 (5) Congress must adequately fund Legal Serv-
6 ices Corporation programs to preserve the strength
7 of the programs.

8 **SEC. 302. AUTHORIZATION OF APPROPRIATIONS.**

9 Section 1010(a) of the Legal Services Corporation
10 Act (42 U.S.C. 2996i(a)) is amended to read as follows:

11 “(a) There is authorized to be appropriated for the
12 purpose of carrying out the activities of the Corporation,
13 \$400,000,000 for fiscal year 2004.”.

14 **TITLE IV—INDIAN TRUST ASSET**
15 **AND TRUST FUND MANAGE-**
16 **MENT AND REFORM**

17 **SEC. 401. SHORT TITLE.**

18 This title may be cited as the “Indian Trust Asset
19 and Trust Fund Management and Reform Act of 2003”.

20 **SEC. 402. FINDINGS.**

21 Congress finds and affirms that the proper discharge
22 of trust responsibility of the United States requires, with-
23 out limitation, that the trustee, using a high degree of
24 care, skill, and loyalty—

1 (1) protect and preserve Indian trust assets
2 from loss, damage, unlawful alienation, waste, and
3 depletion;

4 (2) ensure that any management of Indian
5 trust assets required to be carried out by the Sec-
6 retary—

7 (A) promotes the interest of the beneficial
8 owner; and

9 (B) supports, to the maximum extent prac-
10 ticable in accordance with the trust responsi-
11 bility of the Secretary, the beneficial owner's in-
12 tended use of the assets;

13 (3)(A) enforce the terms of all leases or other
14 agreements that provide for the use of trust assets;
15 and

16 (B) take appropriate steps to remedy trespass
17 on trust or restricted land;

18 (4) promote tribal control and self-determina-
19 tion over tribal trust land and resources;

20 (5) select and oversee persons that manage In-
21 dian trust assets;

22 (6) confirm that Indian tribes that manage In-
23 dian trust assets pursuant to contracts and com-
24 pacts authorized by the Indian Self-Determination
25 and Education Assistance Act (25 U.S.C. 450 et

1 seq.) protect and prudently manage those Indian
2 trust assets;

3 (7) provide oversight and review of the perform-
4 ance of the trust responsibility of the Secretary, in-
5 cluding Indian trust asset and investment manage-
6 ment programs, operational systems, and informa-
7 tion systems;

8 (8) account for and identify, collect, deposit, in-
9 vest, and distribute, in a timely manner, income due
10 or held on behalf of tribal and individual Indian ac-
11 count holders;

12 (9) maintain a verifiable system of records that,
13 at a minimum, is capable of identifying, with respect
14 to a trust asset—

15 (A) the location of the trust asset;

16 (B) the beneficial owners of the trust
17 asset;

18 (C) any legal encumbrances (such as leases
19 or permits) applicable to the trust asset;

20 (D) the user of the trust asset;

21 (E) any rent or other payments made;

22 (F) the value of trust or restricted land
23 and resources associated with the trust asset;

24 (G) dates of—

25 (i) collections;

- 1 (ii) deposits;
- 2 (iii) transfers;
- 3 (iv) disbursements;
- 4 (v) imposition of third-party obliga-
- 5 tions (such as court-ordered child support
- 6 or judgments);
- 7 (vi) statements of earnings;
- 8 (vii) investment instruments; and
- 9 (viii) closure of all trust fund accounts
- 10 relating to the trust fund asset;
- 11 (H) documents pertaining to actions taken
- 12 to prevent or compensate for any diminishment
- 13 of the Indian trust asset; and
- 14 (I) documents that evidence the actions of
- 15 the Secretary regarding the management and
- 16 disposition of the Indian trust asset;
- 17 (10) establish and maintain a system of records
- 18 that—
- 19 (A) permits beneficial owners to obtain in-
- 20 formation regarding Indian trust assets in a
- 21 timely manner; and
- 22 (B) protects the privacy of that informa-
- 23 tion;
- 24 (11) invest tribal and individual Indian trust
- 25 funds to ensure that the trust account remains rea-

1 sonably productive for the beneficial owner con-
 2 sistent with market conditions existing at the time
 3 at which investment is made;

4 (12) communicate with beneficial owners re-
 5 garding the management and administration of In-
 6 dian trust assets; and

7 (13) protect treaty-based fishing, hunting, gath-
 8 ering, and similar rights-of-access and resource use
 9 on traditional tribal land.

10 **SEC. 403. DEFINITIONS.**

11 Section 2 of the American Indian Trust Fund Man-
 12 agement Reform Act of 1994 (25 U.S.C. 4001) is amend-
 13 ed—

14 (1) by striking paragraph (1);

15 (2) in paragraph (2), by striking “(2) The
 16 term” and inserting the following:

17 “(5) INDIAN TRIBE.—The term”;

18 (3) in paragraph (3), by striking “(3) The
 19 term” and inserting the following:

20 “(8) SECRETARY.—The term”;

21 (4) in paragraph (4), by striking “(4) The
 22 term” and inserting the following:

23 “(6) OFFICE.—The term”;

24 (5) in paragraph (5), by striking “(5) The
 25 term” and inserting the following:

1 “(2) BUREAU.—The term”;

2 (6) in paragraph (6), by striking “(6) The
3 term” and inserting the following:

4 “(3) DEPARTMENT.—The term”;

5 (7) by moving paragraphs (2), (3), (5), (6), and
6 (8) (as redesignated by this subsection) so as to ap-
7 pear in numerical order;

8 (8) by inserting before paragraph (2) (as red-
9 igned by paragraph (5)) the following:

10 “(1) BENEFICIAL OWNER.—The term ‘bene-
11 ficial owner’ means an Indian tribe or member of an
12 Indian tribe that is the beneficial owner of Indian
13 trust assets.”;

14 (9) by inserting after paragraph (3) (as redesi-
15 gnated by paragraph (6)) the following:

16 “(4) DEPUTY SECRETARY.—The term ‘Deputy
17 Secretary’ means the Deputy Secretary for Trust
18 Management and Reform appointed under section
19 307(a)(2).”;

20 (10) by inserting after paragraph (6) (as red-
21 igned by paragraph (4)) the following:

22 “(7) REFORM OFFICE.—The term ‘Reform Of-
23 fice’ means the Office of Trust Reform Implementa-
24 tion and Oversight established by section 307(e).”;

25 and

1 (11) by adding at the end the following:

2 “(9) TASK FORCE.—The term ‘Task Force’
3 means the Tribal Task Force for Trust Reform es-
4 tablished under section 307(a).

5 “(10) TRUST ASSETS.—The term ‘trust assets’
6 means all tangible property including land, minerals,
7 coal, oil and gas, forest resources, agricultural re-
8 sources, water and water sources, and fish and wild-
9 life held by the Secretary for the benefit of an In-
10 dian tribe or an individual member of an Indian
11 tribe pursuant to Federal law.

12 “(11) TRUST FUNDS.—The term ‘trust funds’
13 means all funds held by the Secretary for the benefit
14 of an Indian tribe or and individual member of an
15 Indian tribe pursuant to Federal law.

16 “(12) TRUSTEE.—The term ‘trustee’ means the
17 Secretary or any other person that is authorized to
18 act as a trustee for Indian trust assets and trust
19 funds.”.

20 **SEC. 404. RESPONSIBILITIES OF SECRETARY.**

21 Section 102 of the American Indian Trust Fund
22 Management Reform Act of 1994 (25 U.S.C. 4011) is
23 amended to read as follows:

1 **“SEC. 4011. RESPONSIBILITIES OF SECRETARY.**

2 “(a) ACCOUNTING FOR DAILY AND ANNUAL BAL-
3 ANCES OF INDIAN TRUST FUNDS.—

4 “(1) IN GENERAL.—The Secretary shall ac-
5 count for the daily and annual balances of all trust
6 funds that are deposited or invested pursuant to the
7 Act of June 24, 1938 (25 U.S.C. 162a).

8 “(2) PERIODIC STATEMENT OF PERFORM-
9 ANCE.—

10 “(A) IN GENERAL.—Not later than 20
11 business days after the close of a calendar quar-
12 ter, the Secretary shall provide a statement of
13 performance to each Indian tribe and member
14 of Indian tribe with respect to which funds are
15 deposited or invested pursuant to the Act of
16 June 24, 1938 (25 U.S.C. 162a).

17 “(B) REQUIREMENTS.—Each statement
18 under subparagraph (A) shall identify, with re-
19 spect to the period covered by the statement—

20 “(i) the source, type, and status of the
21 funds;

22 “(ii) the beginning balance of the
23 funds;

24 “(iii) the gains and losses of the
25 funds;

1 “(iv) receipts and disbursements of
2 the funds; and

3 “(v) the ending balance of the funds.

4 “(3) ANNUAL AUDIT.—With respect to each ac-
5 count containing trust funds in an amount in excess
6 of \$1,000, the Secretary shall—

7 “(A) conduct, for each fiscal year, an audit
8 of all trust funds described in paragraph (1);
9 and

10 “(B) include, in the first statement of per-
11 formance completed under paragraph (2) after
12 completion of the audit, a letter describing the
13 results of the audit.

14 “(b) ADDITIONAL RESPONSIBILITIES.—In addition
15 to the responsibilities described in subsection (a), subject
16 to the availability of appropriations, the Secretary, in car-
17 rying out the trust responsibility of the United States,
18 shall, at a minimum—

19 “(1) provide for adequate systems for account-
20 ing for and reporting trust fund balances;

21 “(2) provide for adequate controls over receipts
22 and disbursements;

23 “(3) provide for periodic, timely reconciliations
24 of financial records to ensure the accuracy of ac-
25 count information;

1 “(4) determine accurate cash balances;

2 “(5) prepare and supply to account holders
3 periodic account statements;

4 “(6) establish and publish in the Federal Reg-
5 ister consistent policies and procedures for trust
6 fund management and accounting;

7 “(7) provide adequate staffing, supervision, and
8 training for trust fund management and accounting;
9 and

10 “(8) manage natural resources located within
11 the boundaries of Indian reservations and trust
12 land.”.

13 **SEC. 405. INDIAN PARTICIPATION IN TRUST FUND ACTIVI-**
14 **TIES.**

15 Title II of the American Indian Trust Fund Manage-
16 ment Reform Act of 1994 (25 U.S.C. 4021 et seq.) is
17 amended—

18 (1) by striking sections 202 and 203; and

19 (2) by inserting after section 201 the following:

20 **“SEC. 202. PARTICIPATION IN TRUST FUND AND TRUST**
21 **ASSET MANAGEMENT ACTIVITIES BY INDIAN**
22 **TRIBES.**

23 “(a) PLANNING PROGRAM.—To meet the purposes of
24 this title, an Indian Trust Fund and Trust Asset Manage-

1 ment and Monitoring Plan (in this section referred to as
2 the ‘Plan’) shall be developed and implemented as follows:

3 “(1) Pursuant to a self-determination contract
4 or compact under section 102 of the Indian Self-De-
5 termination Act (25 U.S.C. 450f) or section 403 of
6 the Indian Self Determination and Education Assist-
7 ance Act (25 U.S.C. 458cc), an Indian tribe may de-
8 velop or implement a Plan to provide for manage-
9 ment of the trust funds and assets (or portions of
10 trust funds or assets) of which the Indian tribe is
11 the beneficial owner. Subject to the provisions of
12 paragraphs (3) and (4), the tribe shall have broad
13 discretion in designing and carrying out the plan-
14 ning process.

15 “(2) To include in a Plan particular trust funds
16 or assets held by multiple individuals, an Indian
17 tribe shall obtain the approval of a majority of the
18 individuals who hold an interest in any such trust
19 funds or assets.

20 “(3) The Plan shall be submitted to the Sec-
21 retary for approval pursuant to the Indian Self-De-
22 termination Act (25 U.S.C. 450f et seq.).

23 “(4) If an Indian tribe chooses not to develop
24 or implement a Plan, the Secretary shall, at the re-
25 quest of the Indian tribe, develop or implement, as

1 appropriate, a Plan in close consultation with the af-
2 fected Indian tribe.

3 “(5) Whether developed directly by the Indian
4 tribe or by the Secretary, the Plan shall—

5 “(A) determine the amount and source of
6 funds held in trust;

7 “(B) identify and include an inventory of
8 trust assets based on the information available
9 to the Indian tribe and the Secretary;

10 “(C) identify specific tribal goals and ob-
11 jectives;

12 “(D) establish management objectives for
13 the funds and assets held in trust;

14 “(E) define critical values of the Indian
15 tribe and its members and provide identified
16 management objectives;

17 “(F) identify actions to be taken to reach
18 established objectives;

19 “(G) use existing survey documents, re-
20 ports and other research from Federal agencies,
21 tribal community colleges, and land grant uni-
22 versities; and

23 “(H)(i) be completed not later than 3
24 years after the date of initiation of activity to
25 establish the Plan; and

1 “(ii) be revised periodically thereafter as
2 necessary to accomplish the purposes of this
3 Act.

4 “(b) MANAGEMENT AND ADMINISTRATION.—Plans
5 developed and approved under subsection (a) shall govern
6 the management and administration of funds and assets
7 (or portions of funds and assets) held in trust by the Bu-
8 reau and the Indian tribal government.

9 “(c) PLAN DOES NOT TERMINATE TRUST.—Devel-
10 oping or implementing a Plan shall not be construed or
11 deemed to constitute a termination of the trust status of
12 the assets or funds that are included in, or subject to, the
13 Plan.

14 “(d) LIABILITY.—An Indian tribe managing and ad-
15 ministering trust funds and trust assets in a manner that
16 is consistent with an approved Plan shall not be liable for
17 waste or loss of an asset or funds that are included in
18 such Plan.

19 “(e) INDIAN PARTICIPATION IN MANAGEMENT AC-
20 TIVITIES.—

21 “(1) TRIBAL RECOGNITION.—The Secretary
22 shall conduct all management activities of funds and
23 assets held in trust in accordance with goals and ob-
24 jectives set forth in a Plan approved pursuant to
25 and in accordance with all tribal laws and ordi-

1 nances, except in specific instances where such com-
2 pliance would be contrary to the trust responsibility
3 of the United States.

4 “(2) TRIBAL LAWS.—

5 “(A) IN GENERAL.—Unless otherwise pro-
6 hibited by Federal law, the Secretary shall com-
7 ply with tribal law pertaining to the manage-
8 ment of funds and assets held in trust.

9 “(B) DUTIES.—The Secretary shall—

10 “(i) provide assistance in the enforce-
11 ment of tribal laws described in subpara-
12 graph (A);

13 “(ii) provide notice of such tribal laws
14 to persons or entities dealing with tribal
15 funds and assets held in trust; and

16 “(iii) upon the request of an Indian
17 tribe, require appropriate Federal officials
18 to appear in tribal forums.

19 “(3) WAIVER OF REGULATIONS.—In any case
20 in which a regulation or administrative policy of the
21 Department of the Interior conflicts with the objec-
22 tives of the Plan, or with a tribal law, the Secretary
23 shall waive the application of such regulation or ad-
24 ministrative policy unless such waiver would con-
25 stitute a violation of a Federal statute or judicial de-

1 cision or would conflict with the Secretary’s trust re-
2 sponsibility under Federal law.

3 “(4) SOVEREIGN IMMUNITY.—This section does
4 not constitute a waiver of the sovereign immunity of
5 the United States, nor does it authorize tribal justice
6 systems to review actions of the Secretary.

7 “(5) TRUST RESPONSIBILITY.—Nothing in this
8 section shall be construed to diminish or expand the
9 trust responsibility of the United States toward In-
10 dian funds and assets held in trust, or any legal ob-
11 ligation or remedy resulting from such funds and as-
12 sets.

13 “(f) REPORT.—

14 “(1) IN GENERAL.—Not later than 180 days
15 after the enactment of this section, and annually
16 thereafter, the Secretary shall submit a report to the
17 Committee on Indian Affairs of the Senate and the
18 Committee on Resources of the House of Represent-
19 atives.

20 “(2) CONTENTS.—The report required under
21 paragraph (1) shall detail the following:

22 “(A) The efforts of the Department to im-
23 plement this section.

24 “(B) The nature and extent of consultation
25 between the Department, Tribes, and individual

1 Indians with respect to implementation of this
2 section.

3 “(C) Any recommendations of the Depart-
4 ment for further changes to this Act, accom-
5 panied by a record of consultation with Tribes
6 and individual Indians regarding such rec-
7 ommendations.”.

8 **SEC. 406. DEPUTY SECRETARY FOR TRUST MANAGEMENT**
9 **AND REFORM.**

10 (a) IN GENERAL.—Section 302 of the American In-
11 dian Trust Fund Management Reform Act of 1994 (25
12 U.S.C. 4042) is amended to read as follows:

13 **“SEC. 302. DEPUTY SECRETARY FOR TRUST MANAGEMENT**
14 **AND REFORM.**

15 “(a) ESTABLISHMENT.—

16 “(1) IN GENERAL.—There is established within
17 the Department the position of Deputy Secretary for
18 Trust Management and Reform.

19 “(2) APPOINTMENT AND REMOVAL.—

20 “(A) APPOINTMENT.—The Deputy Sec-
21 retary shall be appointed by the President, by
22 and with the advice and consent of the Senate.

23 “(B) TERM.—The Deputy Secretary shall
24 be appointed for a term of 6 years.

1 “(C) REMOVAL.—The Deputy Secretary
2 may be removed only for good cause.

3 “(3) ADMINISTRATIVE AUTHORITY.—The Dep-
4 uty Secretary shall report directly to the Secretary.

5 “(4) COMPENSATION.—The Deputy Secretary
6 shall be paid at a rate determined by the Secretary
7 to be appropriate for the position, but not less than
8 the rate of basic pay prescribed for Level II of the
9 Executive Schedule under section 5313 of title 5,
10 United States Code.

11 “(b) DUTIES.—The Deputy Secretary shall—

12 “(1) oversee all trust fund and trust asset mat-
13 ters of the Department, including—

14 “(A) administration and management of
15 the Reform Office;

16 “(B) financial and human resource matters
17 of the Reform Office; and

18 “(C) all duties relating to trust fund and
19 trust asset matters; and

20 “(2) engage in appropriate government-to-gov-
21 ernment relations and consultations with Indian
22 tribes and individual trust asset and trust fund ac-
23 count holders on matters involving trust asset and
24 trust fund management and reform within the De-
25 partment.

1 “(c) STAFF.—In carrying out this section, the Dep-
2 uty Secretary may hire such staff having expertise in trust
3 asset and trust fund management, financial organization
4 and management, and tribal policy as the Deputy Sec-
5 retary determines is necessary to carry out this title.

6 “(d) EFFECT ON DUTIES OF OTHER OFFICIALS.—

7 “(1) IN GENERAL.—Except as provided in para-
8 graph (2), nothing in this section shall be construed
9 to diminish any responsibility or duty of the Assist-
10 ant Secretary of the Interior for Indian Affairs, or
11 any other Federal official, relating to any duty of
12 the Assistant Secretary or official established under
13 this Act or any other provision of law.

14 “(2) TRUST ASSET AND TRUST FUND MANAGE-
15 MENT AND REFORM.—Notwithstanding any other
16 provision of law, the Deputy Secretary shall have
17 overall management and oversight authority on mat-
18 ters of the Department relating to trust asset and
19 trust fund management and reform (including mat-
20 ters that, as of the day before the date of enactment
21 of the Indian Trust Asset and Trust Fund Manage-
22 ment and Reform Act of 2003, were carried out by
23 the Commissioner of Indian Affairs).

24 “(e) OFFICE OF TRUST REFORM IMPLEMENTATION
25 AND OVERSIGHT.—

1 “(1) ESTABLISHMENT.—There is established
2 within the Office of the Secretary the Office of
3 Trust Reform Implementation and Oversight.

4 “(2) REFORM OFFICE HEAD.—The Reform Of-
5 fice shall be headed by the Deputy Secretary.

6 “(3) DUTIES.—The Reform Office shall—

7 “(A) supervise and direct the day-to-day
8 activities of the Assistant Secretary of the Inte-
9 rior for Indian Affairs, the Commissioner of
10 Reclamation, the Director of the Bureau of
11 Land Management, and the Director of the
12 Minerals Management Service, to the extent
13 they administer or manage any Indian trust as-
14 sets or funds;

15 “(B) administer, in accordance with title
16 II, all trust properties, funds, and other assets
17 held by the United States for the benefit of In-
18 dian tribes and individual members of Indian
19 tribes;

20 “(C) require the development and mainte-
21 nance of an accurate inventory of all trust
22 funds and trust assets;

23 “(D) ensure the prompt posting of revenue
24 derived from a trust fund or trust asset for the
25 benefit of each Indian tribe (or individual mem-

1 ber of each Indian tribe) that owns a beneficial
2 interest in the trust fund or trust asset;

3 “(E) ensure that all trust fund accounts
4 are audited at least annually, and more fre-
5 quently as determined to be necessary by the
6 Deputy Secretary;

7 “(F) ensure that the Assistant Secretary
8 of the Interior for Indian Affairs, the Director
9 of the Bureau of Land Management, the Com-
10 missioner of Reclamation, and the Director of
11 the Minerals Management Service provide to
12 the Secretary current and accurate information
13 relating to the administration and management
14 of trust funds and trust assets;

15 “(G) provide for regular consultation with
16 trust fund account holders on the administra-
17 tion of trust funds and trust assets to ensure,
18 to the maximum extent practicable in accord-
19 ance with applicable law and a Plan approved
20 under section 202, the greatest return on those
21 funds and assets for the trust fund account
22 holders; and

23 “(H) enter into contracts and compacts
24 under section 102 of the Indian Self-Deter-
25 mination Act (25 U.S.C. 450f) or section 403

1 of the Indian Self Determination and Education
2 Assistance Act (25 U.S.C. 458cc) to provide for
3 the management of trust assets and trust funds
4 by Indian tribes pursuant to a Trust Fund and
5 Trust Asset Management and Monitoring Plan
6 developed under section 202 of this Act.

7 “(f) AUTHORIZATION OF APPROPRIATIONS.—There
8 are authorized to be appropriated such sums as are nec-
9 essary to carry out this section.”.

10 (b) CONFORMING AMENDMENTS.—

11 (1) Title III of the American Indian Trust
12 Fund Management Reform Act of 1994 (25 U.S.C.
13 4041 et seq.) is amended by striking the title head-
14 ing and inserting the following:

15 **“TITLE III—REFORMS RELATING**
16 **TO TRUST RESPONSIBILITY”.**

17 (2) Section 301(1) of the American Indian
18 Trust Fund Management Reform Act of 1994 (25
19 U.S.C. 4041(1)) is amended by striking “by estab-
20 lishing in the Department of this Interior an Office
21 of Special Trustee for American Indians” and in-
22 serting “by directing the Deputy Secretary”.

23 (3) Section 303 of the American Indian Trust
24 Fund Management Reform Act of 1994 (25 U.S.C.
25 4043) is amended—

1 (A) by striking the section heading and in-
2 serting the following:

3 **“SEC. 303. ADDITIONAL AUTHORITIES AND FUNCTIONS OF**
4 **THE DEPUTY SECRETARY.”;**

5 (B) in subsection (a)(1), by striking “sec-
6 tion 302(b) of this title” and inserting “section
7 302(a)(2)”;

8 (C) in subsection (e)—

9 (i) by striking the subsection heading
10 and inserting the following:

11 “(e) ACCESS OF DEPUTY SECRETARY.—”; and

12 (ii) by striking “and his staff” and in-
13 serting “and staff of the Deputy Sec-
14 retary”; and

15 (D) by striking “Special Trustee” each
16 place it appears and inserting “Deputy Sec-
17 retary”.

18 (4) Sections 304 and 305 of the American In-
19 dian Trust Fund Management Reform Act of 1994
20 (25 U.S.C. 4044, 4045) are amended by striking
21 “Special Trustee” each place it appears and insert-
22 ing “Deputy Secretary”.

1 **SEC. 407. ADVISORY BOARD AND TRIBAL TASK FORCE.**

2 The American Indian Trust Fund Management Re-
3 form Act of 1994 is amended by striking section 306 (25
4 U.S.C. 4046) and inserting the following:

5 **“SEC. 306. TRIBAL TASK FORCE ON TRUST REFORM.**

6 “(a) ESTABLISHMENT.—As soon as practicable after
7 the date of enactment of this section, the Deputy Sec-
8 retary shall establish a Tribal Task Force on Trust Re-
9 form.

10 “(b) COMPOSITION.—

11 “(1) IN GENERAL.—The Task Force shall be
12 composed of 18 members and 12 alternates, of
13 which—

14 “(A) 6 members shall—

15 “(i) serve as primary members; and

16 “(ii) be selected by the Deputy Sec-
17 retary;

18 “(B) 12 members shall—

19 “(i) serve as primary members; and

20 “(ii) be selected by members of feder-
21 ally-recognized Indian tribes located within
22 the regions of the Bureau represented by
23 the members; and

24 “(C) the 12 alternates shall—

1 “(i) serve as alternate members for
2 the members described in subparagraph
3 (B); and

4 “(ii) be selected by members of feder-
5 ally-recognized Indian tribes located within
6 the regions of the Bureau represented by
7 the members.

8 “(2) REGIONAL REPRESENTATION.—Each re-
9 gion of the Bureau shall be represented by a pri-
10 mary member and alternate member on the Task
11 Force.

12 “(3) TERM.—A member of the Task Force
13 shall serve for a term of 2 years.

14 “(c) DUTIES.—The Task Force, in cooperation with
15 the Deputy Secretary, shall—

16 “(1) not later than 1 year after the date of en-
17 actment of this section, conduct and submit to Con-
18 gress a report on a study of appropriate standards
19 and procedures for inventorying and management of
20 trust assets; and

21 “(2) not later than 2 years after the date of en-
22 actment of this section, identify, and submit to Con-
23 gress a report that includes recommendations relat-
24 ing to, modifications to existing law relating to trust

1 reform, including recommendations on matters such
2 as—

3 “(A) the need for an independent commis-
4 sion to oversee the administration of trust
5 funds and assets; and

6 “(B) the most beneficial administrative
7 structure and procedures.

8 “(d) FACA.—The Task Force shall not be subject
9 to the Federal Advisory Committee Act (5 U.S.C. App.).

10 “(e) AUTHORIZATION OF APPROPRIATIONS.—There
11 are authorized to be appropriated such sums as are nec-
12 essary to carry out this section.

13 “(f) TERMINATION OF AUTHORITY.—The Task
14 Force and authority of the Task Force under this section
15 terminate on the date that is 3 years after the date of
16 enactment of the Indian Trust Asset and Trust Fund
17 Management and Reform Act of 2003.”.

18 **SEC. 408. REGULATIONS.**

19 (a) IN GENERAL.—Not later than 1 year after the
20 date of enactment of this Act, the Secretary of the Interior
21 shall promulgate regulations to carry out the amendments
22 made by this title.

23 (b) ACTIVE PARTICIPATION.—

24 (1) IN GENERAL.—All regulations promulgated
25 under subsection (a) shall be developed through a

1 negotiated rulemaking in accordance with sub-
2 chapter II of chapter 5, and chapter 7, of title 5,
3 United States Code (commonly known as the “Ad-
4 ministrative Procedure Act”).

5 (2) PARTICIPANTS.—With the exception of the
6 Secretary of the Interior, each participant in the ne-
7 gotiated rulemaking under paragraph (1) shall be a
8 federally-recognized Indian tribe.

9 **SEC. 409. NO EFFECT ON CERTAIN JUDICIAL DECISION.**

10 Nothing in this title or any amendment made by this
11 title limits or otherwise affects any finding, remedy, juris-
12 diction, authority, or discretion of any court with respect
13 to *Cobell v. Norton*, Civ. No. 96–1285 (RCL).

14 **TITLE V—RACIAL PROFILING**

15 **SEC. 501. SENSE OF THE SENATE ON RACIAL PROFILING.**

16 (a) FINDINGS.—The Senate finds the following:

17 (1) The vast majority of police officers and
18 other law enforcement agents nationwide discharge
19 their duties and protect their communities in a pro-
20 fessional manner, without bias.

21 (2) The use by some law enforcement agents of
22 race, ethnicity, or national origin in deciding which
23 persons should be subject to traffic stops and other
24 discretionary law enforcement interventions (referred
25 to in this section as “racial profiling”) is wrong.

1 Statistical evidence from throughout the United
2 States demonstrates that such racial profiling is a
3 real and measurable phenomenon.

4 (3) The vast majority of individuals subjected
5 to such stops and interventions based on race, eth-
6 nicity, or national origin are found to be law-abiding.
7 Therefore, racial profiling is not an effective means
8 to uncover criminal activity.

9 (4) Racial profiling harms individuals subjected
10 to it because the individuals experience fear, anxiety,
11 humiliation, anger, resentment, and cynicism when
12 unjustifiably treated as criminal suspects.

13 (5) Racial profiling damages the criminal jus-
14 tice system as a whole by undermining public con-
15 fidence and trust in the police, the courts, and crimi-
16 nal law.

17 (6) President Bush, in his first address to a
18 joint session of Congress on February 27, 2001, said
19 that the practice of racial profiling is wrong and
20 pledged to end the practice.

21 (7) Attorney General John Ashcroft, as recently
22 as July 25, 2002, made a commitment to work with
23 Congress, to get a bill to the President's desk that
24 will make clear that racial profiling is wrong and
25 should be banned in the United States.

1 (b) SENSE OF THE SENATE.—It is the sense of the
2 Senate that Congress should enact legislation—

3 (1) to ban the practice of racial profiling; and

4 (2) to require Federal, State, and local law en-
5 forcement to take steps to prevent the practice.

6 **TITLE VI—PAYCHECK FAIRNESS**

7 **SEC. 601. SHORT TITLE.**

8 This title may be cited as the “Paycheck Fairness
9 Act”.

10 **SEC. 602. FINDINGS.**

11 Congress makes the following findings:

12 (1) Women have entered the workforce in
13 record numbers.

14 (2) Even today, women earn significantly lower
15 pay than men for work on jobs that require equal
16 skill, effort, and responsibility and that are per-
17 formed under similar working conditions. These pay
18 disparities exist in both the private and govern-
19 mental sectors. In many instances, the pay dispari-
20 ties can only be due to continued intentional dis-
21 crimination or the lingering effects of past discrimi-
22 nation.

23 (3) The existence of such pay disparities—

1 (A) depresses the wages of working fami-
2 lies who rely on the wages of all members of the
3 family to make ends meet;

4 (B) prevents the optimum utilization of
5 available labor resources;

6 (C) has been spread and perpetuated,
7 through commerce and the channels and instru-
8 mentalities of commerce, among the workers of
9 the several States;

10 (D) burdens commerce and the free flow of
11 goods in commerce;

12 (E) constitutes an unfair method of com-
13 petition in commerce;

14 (F) leads to labor disputes burdening and
15 obstructing commerce and the free flow of
16 goods in commerce;

17 (G) interferes with the orderly and fair
18 marketing of goods in commerce; and

19 (H) in many instances, may deprive work-
20 ers of equal protection on the basis of sex in
21 violation of the 5th and 14th amendments.

22 (4)(A) Artificial barriers to the elimination of
23 discrimination in the payment of wages on the basis
24 of sex continue to exist decades after the enactment
25 of the Fair Labor Standards Act of 1938 (29 U.S.C.

1 201 et seq.) and the Civil Rights Act of 1964 (42
2 U.S.C. 2000a et seq.).

3 (B) Elimination of such barriers would have
4 positive effects, including—

5 (i) providing a solution to problems in the
6 economy created by unfair pay disparities;

7 (ii) substantially reducing the number of
8 working women earning unfairly low wages,
9 thereby reducing the dependence on public as-
10 sistance;

11 (iii) promoting stable families by enabling
12 all family members to earn a fair rate of pay;

13 (iv) remedying the effects of past discrimi-
14 nation on the basis of sex and ensuring that in
15 the future workers are afforded equal protection
16 on the basis of sex; and

17 (v) ensuring equal protection pursuant to
18 Congress' power to enforce the 5th and 14th
19 amendments.

20 (5) With increased information about the provi-
21 sions added by the Equal Pay Act of 1963 and wage
22 data, along with more effective remedies, women will
23 be better able to recognize and enforce their rights
24 to equal pay for work on jobs that require equal

1 skill, effort, and responsibility and that are per-
 2 formed under similar working conditions.

3 (6) Certain employers have already made great
 4 strides in eradicating unfair pay disparities in the
 5 workplace and their achievements should be recog-
 6 nized.

7 **SEC. 603. ENHANCED ENFORCEMENT OF EQUAL PAY RE-**
 8 **QUIREMENTS.**

9 (a) **REQUIRED DEMONSTRATION FOR AFFIRMATIVE**
 10 **DEFENSE.**—Section 6(d)(1) of the Fair Labor Standards
 11 Act of 1938 (29 U.S.C. 206(d)(1)) is amended by striking
 12 “(iv) a differential” and all that follows through the period
 13 and inserting the following: “(iv) a differential based on
 14 a bona fide factor other than sex, such as education, train-
 15 ing or experience, except that this clause shall apply only
 16 if—

17 “(I) the employer demonstrates
 18 that—

19 “(aa) such factor—

20 “(AA) is job-related with re-
 21 spect to the position in question;

22 or

23 “(BB) furthers a legitimate
 24 business purpose, except that this
 25 item shall not apply where the

1 employee demonstrates that an
2 alternative employment practice
3 exists that would serve the same
4 business purpose without pro-
5 ducing such differential and that
6 the employer has refused to
7 adopt such alternative practice;
8 and

9 “(bb) such factor was actually
10 applied and used reasonably in light
11 of the asserted justification; and

12 “(II) upon the employer succeeding
13 under subclause (I), the employee fails to
14 demonstrate that the differential produced
15 by the reliance of the employer on such
16 factor is itself the result of discrimination
17 on the basis of sex by the employer.

18 “An employer that is not otherwise in compliance
19 with this paragraph may not reduce the wages of
20 any employee in order to achieve such compliance.”.

21 (b) APPLICATION OF PROVISIONS.—Section 6(d)(1)
22 of the Fair Labor Standards Act of 1938 (29 U.S.C.
23 206(d)(1)) is amended by adding at the end the following:
24 “The provisions of this subsection shall apply to applicants
25 for employment if such applicants, upon employment by

1 the employer, would be subject to any provisions of this
2 section.”.

3 (c) ELIMINATION OF ESTABLISHMENT REQUIRE-
4 MENT.—Section 6(d) of the Fair Labor Standards Act of
5 1938 (29 U.S.C. 206(d)) is amended—

6 (1) by striking “, within any establishment in
7 which such employees are employed,”; and

8 (2) by striking “in such establishment” each
9 place it appears.

10 (d) NONRETALIATION PROVISION.—Section 15(a)(3)
11 of the Fair Labor Standards Act of 1938 (29 U.S.C.
12 215(a)(3)) is amended—

13 (1) by striking “or has” each place it appears
14 and inserting “has”; and

15 (2) by inserting before the semicolon the fol-
16 lowing: “, or has inquired about, discussed, or other-
17 wise disclosed the wages of the employee or another
18 employee, or because the employee (or applicant) has
19 made a charge, testified, assisted, or participated in
20 any manner in an investigation, proceeding, hearing,
21 or action under section 6(d)”.

22 (e) ENHANCED PENALTIES.—Section 16(b) of the
23 Fair Labor Standards Act of 1938 (29 U.S.C. 216(b)) is
24 amended—

1 (1) by inserting after the first sentence the fol-
2 lowing: “Any employer who violates section 6(d)
3 shall additionally be liable for such compensatory or
4 punitive damages as may be appropriate, except that
5 the United States shall not be liable for punitive
6 damages.”;

7 (2) in the sentence beginning “An action to”,
8 by striking “either of the preceding sentences” and
9 inserting “any of the preceding sentences of this
10 subsection”;

11 (3) in the sentence beginning “No employees
12 shall”, by striking “No employees” and inserting
13 “Except with respect to class actions brought to en-
14 force section 6(d), no employee”;

15 (4) by inserting after the sentence referred to
16 in paragraph (3), the following: “Notwithstanding
17 any other provision of Federal law, any action
18 brought to enforce section 6(d) may be maintained
19 as a class action as provided by the Federal Rules
20 of Civil Procedure.”; and

21 (5) in the sentence beginning “The court in”—

22 (A) by striking “in such action” and in-
23 serting “in any action brought to recover the li-
24 ability prescribed in any of the preceding sen-
25 tences of this subsection”; and

1 (B) by inserting before the period the fol-
2 lowing: “, including expert fees”.

3 (f) ACTION BY SECRETARY.—Section 16(c) of the
4 Fair Labor Standards Act of 1938 (29 U.S.C. 216(c)) is
5 amended—

6 (1) in the first sentence—

7 (A) by inserting “or, in the case of a viola-
8 tion of section 6(d), additional compensatory or
9 punitive damages,” before “and the agree-
10 ment”; and

11 (B) by inserting before the period the fol-
12 lowing: “, or such compensatory or punitive
13 damages, as appropriate”;

14 (2) in the second sentence, by inserting before
15 the period the following: “and, in the case of a viola-
16 tion of section 6(d), additional compensatory or pu-
17 nitive damages”;

18 (3) in the third sentence, by striking “the first
19 sentence” and inserting “the first or second sen-
20 tence”; and

21 (4) in the last sentence—

22 (A) by striking “commenced in the case”
23 and inserting “commenced—
24 “(1) in the case”;

1 (B) by striking the period and inserting
2 “; or”; and

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

4 “(2) in the case of a class action brought to en-
5 force section 6(d), on the date on which the indi-
6 vidual becomes a party plaintiff to the class action”.

7 **SEC. 604. TRAINING.**

8 The Equal Employment Opportunity Commission
9 and the Office of Federal Contract Compliance Programs,
10 subject to the availability of funds appropriated under sec-
11 tion 609, shall provide training to Commission employees
12 and affected individuals and entities on matters involving
13 discrimination in the payment of wages.

14 **SEC. 605. RESEARCH, EDUCATION, AND OUTREACH.**

15 The Secretary of Labor shall conduct studies and
16 provide information to employers, labor organizations, and
17 the general public concerning the means available to elimi-
18 nate pay disparities between men and women, including—

19 (1) conducting and promoting research to de-
20 velop the means to correct expeditiously the condi-
21 tions leading to the pay disparities;

22 (2) publishing and otherwise making available
23 to employers, labor organizations, professional asso-
24 ciations, educational institutions, the media, and the
25 general public the findings resulting from studies

1 and other materials, relating to eliminating the pay
2 disparities;

3 (3) sponsoring and assisting State and commu-
4 nity informational and educational programs;

5 (4) providing information to employers, labor
6 organizations, professional associations, and other
7 interested persons on the means of eliminating the
8 pay disparities;

9 (5) recognizing and promoting the achievements
10 of employers, labor organizations, and professional
11 associations that have worked to eliminate the pay
12 disparities; and

13 (6) convening a national summit to discuss, and
14 consider approaches for rectifying, the pay dispari-
15 ties.

16 **SEC. 606. TECHNICAL ASSISTANCE AND EMPLOYER REC-**
17 **OGNITION PROGRAM.**

18 (a) GUIDELINES.—

19 (1) IN GENERAL.—The Secretary of Labor shall
20 develop guidelines to enable employers to evaluate
21 job categories based on objective criteria such as
22 educational requirements, skill requirements, inde-
23 pendence, working conditions, and responsibility, in-
24 cluding decisionmaking responsibility and de facto
25 supervisory responsibility.

1 (2) USE.—The guidelines developed under
2 paragraph (1) shall be designed to enable employers
3 voluntarily to compare wages paid for different jobs
4 to determine if the pay scales involved adequately
5 and fairly reflect the educational requirements, skill
6 requirements, independence, working conditions, and
7 responsibility for each such job with the goal of
8 eliminating unfair pay disparities between occupa-
9 tions traditionally dominated by men or women.

10 (3) PUBLICATION.—The guidelines shall be de-
11 veloped under paragraph (1) and published in the
12 Federal Register not later than 180 days after the
13 date of enactment of this Act.

14 (b) EMPLOYER RECOGNITION.—

15 (1) PURPOSE.—It is the purpose of this sub-
16 section to emphasize the importance of, encourage
17 the improvement of, and recognize the excellence of
18 employer efforts to pay wages to women that reflect
19 the real value of the contributions of such women to
20 the workplace.

21 (2) IN GENERAL.—To carry out the purpose of
22 this subsection, the Secretary of Labor shall estab-
23 lish a program under which the Secretary shall pro-
24 vide for the recognition of employers who, pursuant
25 to a voluntary job evaluation conducted by the em-

1 ployer, adjust their wage scales (such adjustments
2 shall not include the lowering of wages paid to men)
3 using the guidelines developed under subsection (a)
4 to ensure that women are paid fairly in comparison
5 to men.

6 (3) TECHNICAL ASSISTANCE.—The Secretary of
7 Labor may provide technical assistance to assist an
8 employer in carrying out an evaluation under para-
9 graph (2).

10 (c) REGULATIONS.—The Secretary of Labor shall
11 promulgate such rules and regulations as may be nec-
12 essary to carry out this section.

13 **SEC. 607. ESTABLISHMENT OF THE NATIONAL AWARD FOR**
14 **PAY EQUITY IN THE WORKPLACE.**

15 (a) IN GENERAL.—There is established the Secretary
16 of Labor’s National Award for Pay Equity in the Work-
17 place, which shall be evidenced by a medal bearing the
18 inscription “Secretary of Labor’s National Award for Pay
19 Equity in the Workplace”. The medal shall be of such de-
20 sign and materials, and bear such additional inscriptions,
21 as the Secretary of Labor may prescribe.

22 (b) CRITERIA FOR QUALIFICATION.—To qualify to
23 receive an award under this section a business shall—

24 (1) submit a written application to the Sec-
25 retary of Labor, at such time, in such manner, and

1 containing such information as the Secretary may
2 require, including at a minimum information that
3 demonstrates that the business has made substantial
4 effort to eliminate pay disparities between men and
5 women, and deserves special recognition as a con-
6 sequence; and

7 (2) meet such additional requirements and
8 specifications as the Secretary of Labor determines
9 to be appropriate.

10 (c) MAKING AND PRESENTATION OF AWARD.—

11 (1) AWARD.—After receiving recommendations
12 from the Secretary of Labor, the President or the
13 designated representative of the President shall an-
14 nually present the award described in subsection (a)
15 to businesses that meet the qualifications described
16 in subsection (b).

17 (2) PRESENTATION.—The President or the des-
18 ignated representative of the President shall present
19 the award under this section with such ceremonies
20 as the President or the designated representative of
21 the President may determine to be appropriate.

22 (d) BUSINESS.—In this section, the term “business”
23 includes—

24 (1)(A) a corporation, including a nonprofit cor-
25 poration;

- 1 (B) a partnership;
- 2 (C) a professional association;
- 3 (D) a labor organization; and
- 4 (E) a business entity similar to an entity de-
- 5 scribed in any of subparagraphs (A) through (D);
- 6 (2) an entity carrying out an education referral
- 7 program, a training program, such as an apprentice-
- 8 ship or management training program, or a similar
- 9 program; and
- 10 (3) an entity carrying out a joint program,
- 11 formed by a combination of any entities described in
- 12 paragraph (1) or (2).

13 **SEC. 608. COLLECTION OF PAY INFORMATION BY THE**

14 **EQUAL EMPLOYMENT OPPORTUNITY COM-**

15 **MISSION.**

16 Section 709 of the Civil Rights Act of 1964 (42

17 U.S.C. 2000e–8) is amended by adding at the end the fol-

18 lowing:

19 “(f)(1) Not later than 18 months after the date of

20 enactment of this subsection, the Commission shall—

21 “(A) complete a survey of the data that is cur-

22 rently available to the Federal Government relating

23 to employee pay information for use in the enforce-

24 ment of Federal laws prohibiting pay discrimination

25 and, in consultation with other relevant Federal

1 agencies, identify additional data collections that will
 2 enhance the enforcement of such laws; and

3 “(B) based on the results of the survey and
 4 consultations under subparagraph (A), issue regula-
 5 tions to provide for the collection of pay information
 6 data from employers as described by the sex, race,
 7 and national origin of employees.

8 “(2) In implementing paragraph (1), the Commission
 9 shall have as its primary consideration the most effective
 10 and efficient means for enhancing the enforcement of Fed-
 11 eral laws prohibiting pay discrimination. For this purpose,
 12 the Commission shall consider factors including the impo-
 13 sition of burdens on employers, the frequency of required
 14 reports (including which employers should be required to
 15 prepare reports), appropriate protections for maintaining
 16 data confidentiality, and the most effective format for the
 17 data collection reports.”.

18 **SEC. 609. AUTHORIZATION OF APPROPRIATIONS.**

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

21 **TITLE VII—EMPLOYMENT NON-**
 22 **DISCRIMINATION**

23 **SEC. 701. SHORT TITLE.**

24 This title may be cited as the “Employment Non-Dis-
 25 crimination Act of 2003”.

1 **SEC. 702. PURPOSES.**

2 The purposes of this title are—

3 (1) to provide a comprehensive Federal prohibi-
4 tion of employment discrimination on the basis of
5 sexual orientation;

6 (2) to provide meaningful and effective rem-
7 edies for employment discrimination on the basis of
8 sexual orientation; and

9 (3) to invoke congressional powers, including
10 the powers to enforce the 14th amendment to the
11 Constitution, and to regulate interstate commerce
12 and provide for the general welfare pursuant to sec-
13 tion 8 of article I of the Constitution, in order to
14 prohibit employment discrimination on the basis of
15 sexual orientation.

16 **SEC. 703. DEFINITIONS.**

17 (a) IN GENERAL.—In this title:

18 (1) COMMISSION.—The term “Commission”
19 means the Equal Employment Opportunity Commis-
20 sion.

21 (2) COVERED ENTITY.—The term “covered en-
22 tity” means an employer, employment agency, labor
23 organization, or joint labor-management committee.

24 (3) EMPLOYEE.—

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

1 (i) an employee (as defined in section
2 701(f) of the Civil Rights Act of 1964 (42
3 U.S.C. 2000e(f));

4 (ii) a Presidential appointee or State
5 employee to which section 302(a)(1) of the
6 Government Employee Rights Act of 1991
7 (2 U.S.C. 1202(a)(1)) applies;

8 (iii) a covered employee, as defined in
9 section 101 of the Congressional Account-
10 ability Act of 1995 (2 U.S.C. 1301) or sec-
11 tion 411(c) of title 3, United States Code;
12 or

13 (iv) an employee or applicant to which
14 section 717(a) of the Civil Rights Act of
15 1964 (42 U.S.C. 2000e-16(a)) applies.

16 (B) EXCEPTION.—The provisions of this
17 title that apply to an employee or individual
18 shall not apply to a volunteer who receives no
19 compensation.

20 (4) EMPLOYER.—The term “employer”
21 means—

22 (A) a person engaged in an industry affect-
23 ing commerce (as defined in section 701(h) of
24 the Civil Rights Act of 1964 (42 U.S.C.
25 2000e(h)) who has 15 or more employees (as

1 defined in subparagraphs (A)(i) and (B) of
2 paragraph (3)) for each working day in each of
3 20 or more calendar weeks in the current or
4 preceding calendar year, and any agent of such
5 a person, but does not include a bona fide pri-
6 vate membership club (other than a labor orga-
7 nization) that is exempt from taxation under
8 section 501(c) of the Internal Revenue Code of
9 1986;

10 (B) an employing authority to which sec-
11 tion 302(a)(1) of the Government Employee
12 Rights Act of 1991 applies;

13 (C) an employing office, as defined in sec-
14 tion 101 of the Congressional Accountability
15 Act of 1995 or section 411(c) of title 3, United
16 States Code; or

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

19 (5) EMPLOYMENT AGENCY.—The term “em-
20 ployment agency” has the meaning given the term in
21 section 701(c) of the Civil Rights Act of 1964 (42
22 U.S.C. 2000e(c)).

23 (6) LABOR ORGANIZATION.—The term “labor
24 organization” has the meaning given the term in

1 section 701(d) of the Civil Rights Act of 1964 (42
2 U.S.C. 2000e(d)).

3 (7) PERSON.—The term “person” has the
4 meaning given the term in section 701(a) of the
5 Civil Rights Act of 1964 (42 U.S.C. 2000e(a)).

6 (8) RELIGIOUS ORGANIZATION.—The term “re-
7 ligious organization” means—

8 (A) a religious corporation, association, or
9 society; or

10 (B) a school, college, university, or other
11 educational institution or institution of learn-
12 ing, if—

13 (i) the institution is in whole or sub-
14 stantial part controlled, managed, owned,
15 or supported by a religion, religious cor-
16 poration, association, or society; or

17 (ii) the curriculum of the institution is
18 directed toward the propagation of a reli-
19 gion.

20 (9) SEXUAL ORIENTATION.—The term “sexual
21 orientation” means homosexuality, bisexuality, or
22 heterosexuality, whether the orientation is real or
23 perceived.

1 (10) STATE.—The term “State” has the mean-
2 ing given the term in section 701(i) of the Civil
3 Rights Act of 1964 (42 U.S.C. 2000e(i)).

4 (b) APPLICATION OF DEFINITIONS.—For purposes of
5 this section, a reference in section 701 of the Civil Rights
6 Act of 1964—

7 (1) to an employee or an employer shall be con-
8 sidered to refer to an employee (as defined in para-
9 graph (3)) or an employer (as defined in paragraph
10 (4)), respectively, except as provided in paragraph
11 (2); and

12 (2) to an employer in subsection (f) of that sec-
13 tion shall be considered to refer to an employer (as
14 defined in paragraph (4)(A)).

15 **SEC. 704. DISCRIMINATION PROHIBITED.**

16 (a) EMPLOYER PRACTICES.—It shall be an unlawful
17 employment practice for an employer—

18 (1) to fail or refuse to hire or to discharge any
19 individual, or otherwise to discriminate against any
20 individual with respect to the compensation, terms,
21 conditions, or privileges of employment of the indi-
22 vidual, because of such individual’s sexual orienta-
23 tion; or

24 (2) to limit, segregate, or classify the employees
25 or applicants for employment of the employer in any

1 way that would deprive or tend to deprive any indi-
2 vidual of employment or otherwise adversely affect
3 the status of the individual as an employee, because
4 of such individual's sexual orientation.

5 (b) EMPLOYMENT AGENCY PRACTICES.—It shall be
6 an unlawful employment practice for an employment agen-
7 cy to fail or refuse to refer for employment, or otherwise
8 to discriminate against, any individual because of the sex-
9 ual orientation of the individual or to classify or refer for
10 employment any individual on the basis of the sexual ori-
11 entation of the individual.

12 (c) LABOR ORGANIZATION PRACTICES.—It shall be
13 an unlawful employment practice for a labor organiza-
14 tion—

15 (1) to exclude or to expel from its membership,
16 or otherwise to discriminate against, any individual
17 because of the sexual orientation of the individual;

18 (2) to limit, segregate, or classify its member-
19 ship or applicants for membership, or to classify or
20 fail or refuse to refer for employment any individual,
21 in any way that would deprive or tend to deprive any
22 individual of employment, or would limit such em-
23 ployment or otherwise adversely affect the status of
24 the individual as an employee or as an applicant for

1 employment, because of such individual's sexual ori-
2 entation; or

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

6 (d) TRAINING PROGRAMS.—It shall be an unlawful
7 employment practice for any employer, labor organization,
8 or joint labor-management committee controlling appren-
9 ticeship or other training or retraining, including on-the-
10 job training programs, to discriminate against any indi-
11 vidual because of the sexual orientation of the individual
12 in admission to, or employment in, any program estab-
13 lished to provide apprenticeship or other training.

14 (e) ASSOCIATION.—An unlawful employment practice
15 described in any of subsections (a) through (d) shall be
16 considered to include an action described in that sub-
17 section, taken against an individual based on the sexual
18 orientation of a person with whom the individual associ-
19 ates or has associated.

20 (f) DISPARATE IMPACT.—Only disparate treatment
21 claims may be brought under this title.

22 **SEC. 705. RETALIATION PROHIBITED.**

23 It shall be an unlawful employment practice for a cov-
24 ered entity to discriminate against an individual because
25 such individual opposed any practice made an unlawful

1 employment practice by this title, or because such indi-
2 vidual made a charge, testified, assisted, or participated
3 in any manner in an investigation, proceeding, or hearing
4 under this title.

5 **SEC. 706. BENEFITS.**

6 This title does not apply to the provision of employee
7 benefits to an individual for the benefit of the domestic
8 partner of such individual.

9 **SEC. 707. COLLECTION OF STATISTICS PROHIBITED.**

10 The Commission shall not collect statistics on sexual
11 orientation from covered entities, or compel the collection
12 of such statistics by covered entities.

13 **SEC. 708. QUOTAS AND PREFERENTIAL TREATMENT PRO-**
14 **HIBITED.**

15 (a) QUOTAS.—A covered entity shall not adopt or im-
16 plement a quota on the basis of sexual orientation.

17 (b) PREFERENTIAL TREATMENT.—A covered entity
18 shall not give preferential treatment to an individual on
19 the basis of sexual orientation.

20 (c) ORDERS AND CONSENT DECREES.—Notwith-
21 standing any other provision of this title, an order or con-
22 sent decree entered for a violation of this title may not
23 include a quota, or preferential treatment to an individual,
24 based on sexual orientation.

1 **SEC. 709. RELIGIOUS EXEMPTION.**

2 This title shall not apply to a religious organization.

3 **SEC. 710. NONAPPLICATION TO MEMBERS OF THE ARMED**
4 **FORCES; VETERANS' PREFERENCES.**

5 (a) ARMED FORCES.—

6 (1) EMPLOYMENT.—In this title, the term “em-
7 ployment” does not apply to the relationship be-
8 tween the United States and members of the Armed
9 Forces.

10 (2) ARMED FORCES.—In paragraph (1), the
11 term “Armed Forces” means the Army, Navy, Air
12 Force, Marine Corps, and Coast Guard.

13 (b) VETERANS' PREFERENCES.—This title does not
14 repeal or modify any Federal, State, territorial, or local
15 law creating a special right or preference concerning em-
16 ployment for a veteran.

17 **SEC. 711. CONSTRUCTION.**

18 (a) EMPLOYER RULES AND POLICIES.—Nothing in
19 this title shall be construed to prohibit a covered entity
20 from enforcing rules and policies, if the rules or policies
21 are designed for, and uniformly applied to, all individuals
22 regardless of sexual orientation.

23 (b) ASSOCIATION.—Nothing in this title shall be con-
24 strued to prohibit any association, or infringe upon any
25 right of association, guaranteed by the first amendment

1 to the Constitution, of any nonprofit, voluntary member-
2 ship organization.

3 **SEC. 712. ENFORCEMENT.**

4 (a) ENFORCEMENT POWERS.—With respect to the
5 administration and enforcement of this title in the case
6 of a claim alleged by an individual for a violation of this
7 title—

8 (1) the Commission shall have the same powers
9 as the Commission has to administer and enforce—

10 (A) title VII of the Civil Rights Act of
11 1964 (42 U.S.C. 2000e et seq.); or

12 (B) sections 302 and 304 of the Govern-
13 ment Employee Rights Act of 1991 (2 U.S.C.
14 1202 and 1220);

15 in the case of a claim alleged by such individual for
16 a violation of such title, or of section 302(a)(1) of
17 the Government Employee Rights Act of 1991 (2
18 U.S.C. 1202(a)(1)), respectively;

19 (2) the Librarian of Congress shall have the
20 same powers as the Librarian of Congress has to ad-
21 minister and enforce title VII of the Civil Rights Act
22 of 1964 (42 U.S.C. 2000e et seq.) in the case of a
23 claim alleged by such individual for a violation of
24 such title;

1 (3) the Board (as defined in section 101 of the
2 Congressional Accountability Act of 1995 (2 U.S.C.
3 1301)) shall have the same powers as the Board has
4 to administer and enforce the Congressional Ac-
5 countability Act of 1995 (2 U.S.C. 1301 et seq.) in
6 the case of a claim alleged by such individual for a
7 violation of section 201(a)(1) of such Act (2 U.S.C.
8 1311(a)(1));

9 (4) the Attorney General shall have the same
10 powers as the Attorney General has to administer
11 and enforce—

12 (A) title VII of the Civil Rights Act of
13 1964 (42 U.S.C. 2000e et seq.); or

14 (B) sections 302 and 304 of the Govern-
15 ment Employee Rights Act of 1991 (2 U.S.C.
16 1202 and 1220);

17 in the case of a claim alleged by such individual for
18 a violation of such title, or of section 302(a)(1) of
19 the Government Employee Rights Act of 1991 (2
20 U.S.C. 1202(a)(1)), respectively;

21 (5) the President, the Commission, and the
22 Merit Systems Protection Board shall have the same
23 powers as the President, the Commission, and the
24 Board, respectively, have to administer and enforce
25 chapter 5 of title 3, United States Code, in the case

1 of a claim alleged by such individual for a violation
2 of section 411 of such title;

3 (6) a court of the United States shall have the
4 same jurisdiction and powers as the court has to en-
5 force—

6 (A) title VII of the Civil Rights Act of
7 1964 (42 U.S.C. 2000e et seq.) in the case of
8 a claim alleged by such individual for a viola-
9 tion of such title;

10 (B) sections 302 and 304 of the Govern-
11 ment Employee Rights Act of 1991 (2 U.S.C.
12 1202 and 1220) in the case of a claim alleged
13 by such individual for a violation of section
14 302(a)(1) of such Act (2 U.S.C. 1202(a)(1));

15 (C) the Congressional Accountability Act
16 of 1995 (2 U.S.C. 1301 et seq.) in the case of
17 a claim alleged by such individual for a viola-
18 tion of section 201(a)(1) of such Act (2 U.S.C.
19 1311(a)(1)); and

20 (D) chapter 5 of title 3, United States
21 Code, in the case of a claim alleged by such in-
22 dividual for a violation of section 411 of such
23 title.

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

4 (1) the procedures and remedies applicable for
5 a violation of title VII of the Civil Rights Act of
6 1964 (42 U.S.C. 2000e et seq.) in the case of a
7 claim alleged by such individual for a violation of
8 such title;

9 (2) the procedures and remedies applicable for
10 a violation of section 302(a)(1) of the Government
11 Employee Rights Act of 1991 (2 U.S.C. 1202(a)(1))
12 in the case of a claim alleged by such individual for
13 a violation of such section;

14 (3) the procedures and remedies applicable for
15 a violation of section 201(a)(1) of the Congressional
16 Accountability Act of 1995 (2 U.S.C. 1311(a)(1)) in
17 the case of a claim alleged by such individual for a
18 violation of such section; and

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

23 (c) OTHER APPLICABLE PROVISIONS.—With respect
24 to a claim alleged by a covered employee (as defined in
25 section 101 of the Congressional Accountability Act of

1 1995 (2 U.S.C. 1301)) for a violation of this title, title
2 III of the Congressional Accountability Act of 1995 (2
3 U.S.C. 1381 et seq.) shall apply in the same manner as
4 such title applies with respect to a claim alleged by such
5 a covered employee for a violation of section 201(a)(1) of
6 such Act (2 U.S.C. 1311(a)(1)).

7 (d) PROHIBITION OF AFFIRMATIVE ACTION.—Not-
8 withstanding any other provision of this section, affirma-
9 tive action for a violation of this title may not be imposed.
10 Nothing in this section shall prevent the granting of relief
11 to any individual who suffers a violation of such individ-
12 ual’s rights provided in this title.

13 **SEC. 713. STATE AND FEDERAL IMMUNITY.**

14 (a) STATE IMMUNITY.—A State shall not be immune
15 under the 11th amendment to the Constitution from a suit
16 described in subsection (b) and brought in a Federal court
17 of competent jurisdiction for a violation of this title.

18 (b) REMEDIES FOR STATE EMPLOYEES.—

19 (1) IN GENERAL.—

20 (A) WAIVER.—A State’s receipt or use of
21 Federal financial assistance for any program or
22 activity of a State shall constitute a waiver of
23 sovereign immunity, under the 11th amendment
24 to the Constitution or otherwise, to a suit
25 brought by an employee or applicant for em-

1 ployment of that program or activity under this
2 title for a remedy authorized under subsection
3 (c).

4 (B) DEFINITION.—In this paragraph, the
5 term “program or activity” has the meaning
6 given the term in section 606 of the Civil
7 Rights Act of 1964 (42 U.S.C. 2000d–4a).

8 (2) OFFICIALS.—An official of a State may be
9 sued in the official capacity of the official by any
10 employee or applicant for employment who has com-
11 plied with the applicable procedures of section 712,
12 for equitable relief that is authorized under this title.
13 In such a suit the court may award to the prevailing
14 party those costs authorized by section 722 of the
15 Revised Statutes (42 U.S.C. 1988).

16 (3) EFFECTIVE DATE.—With respect to a par-
17 ticular program or activity, paragraphs (1) and (2)
18 apply to conduct occurring on or after the day, after
19 the date of enactment of this Act, on which a State
20 first receives or uses Federal financial assistance for
21 that program or activity.

22 (c) REMEDIES AGAINST THE UNITED STATES AND
23 THE STATES.—Notwithstanding any other provision of
24 this Act, in an action or administrative proceeding against
25 the United States or a State for a violation of this title,

1 remedies (including remedies at law and in equity, and
2 interest) are available for the violation to the same extent
3 as the remedies are available for a violation of title VII
4 of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.)
5 by a private entity, except that—

6 (1) punitive damages are not available; and

7 (2) compensatory damages are available to the
8 extent specified in section 1977A(b) of the Revised
9 Statutes (42 U.S.C. 1981a(b)).

10 **SEC. 714. ATTORNEYS' FEES.**

11 Notwithstanding any other provision of this title, in
12 an action or administrative proceeding for a violation of
13 this title, an entity described in section 712(a) (other than
14 paragraph (4) of such section), in the discretion of the
15 entity, may allow the prevailing party, other than the
16 Commission or the United States, a reasonable attorney's
17 fee (including expert fees) as part of the costs. The Com-
18 mission and the United States shall be liable for the costs
19 to the same extent as a private person.

20 **SEC. 715. POSTING NOTICES.**

21 A covered entity who is required to post notices de-
22 scribed in section 711 of the Civil Rights Act of 1964 (42
23 U.S.C. 2000e–10) shall post notices for employees, appli-
24 cants for employment, and members, to whom the provi-
25 sions specified in section 712(b) of this Act apply, that

1 describe the applicable provisions of this title in the man-
2 ner prescribed by, and subject to the penalty provided
3 under, section 711 of the Civil Rights Act of 1964.

4 **SEC. 716. REGULATIONS.**

5 (a) IN GENERAL.—Except as provided in subsections
6 (b), (c), and (d), the Commission shall have authority to
7 issue regulations to carry out this title.

8 (b) LIBRARIAN OF CONGRESS.—The Librarian of
9 Congress shall have authority to issue regulations to carry
10 out this title with respect to employees and applicants for
11 employment of the Library of Congress.

12 (c) BOARD.—The Board referred to in section
13 712(a)(3) shall have authority to issue regulations to carry
14 out this title, in accordance with section 304 of the Con-
15 gressional Accountability Act of 1995 (2 U.S.C. 1384),
16 with respect to covered employees, as defined in section
17 101 of such Act (2 U.S.C. 1301).

18 (d) PRESIDENT.—The President shall have authority
19 to issue regulations to carry out this title with respect to
20 covered employees, as defined in section 411(c) of title 3,
21 United States Code.

22 **SEC. 717. RELATIONSHIP TO OTHER LAWS.**

23 This title shall not invalidate or limit the rights, rem-
24 edies, or procedures available to an individual claiming

1 discrimination prohibited under any other Federal law or
2 any law of a State or political subdivision of a State.

3 **SEC. 718. SEVERABILITY.**

4 If any provision of this title, or the application of the
5 provision to any person or circumstance, is held to be in-
6 valid, the remainder of this title and the application of
7 the provision to any other person or circumstance shall
8 not be affected by the invalidity.

9 **SEC. 719. EFFECTIVE DATE.**

10 This title shall take effect 60 days after the date of
11 enactment of this Act and shall not apply to conduct oc-
12 ccurring before the effective date.

13 **TITLE VIII—GENETIC**
14 **NONDISCRIMINATION**

15 **SEC. 801. SHORT TITLE.**

16 This title may be cited as the “Genetic Non-
17 discrimination in Health Insurance and Employment
18 Act”.

1 **Subtitle A—Prohibition of Health**
2 **Insurance Discrimination on the**
3 **Basis of Protected Genetic In-**
4 **formation**

5 **SEC. 811. AMENDMENTS TO EMPLOYEE RETIREMENT IN-**
6 **COME SECURITY ACT OF 1974.**

7 (a) PROHIBITION OF HEALTH INSURANCE DISCRIMI-
8 NATION ON THE BASIS OF GENETIC SERVICES OR PRO-
9 TECTED GENETIC INFORMATION.—

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

17 (2) NO DISCRIMINATION IN GROUP RATE BASED
18 ON PROTECTED GENETIC INFORMATION.—

19 (A) IN GENERAL.—Subpart B of part 7 of
20 subtitle B of title I of the Employee Retirement
21 Income Security Act of 1974 (29 U.S.C. 1185
22 et seq.) is amended by adding at the end the
23 following:

1 **“SEC. 714. PROHIBITING DISCRIMINATION AGAINST**
2 **GROUPS ON THE BASIS OF PROTECTED GE-**
3 **NETIC INFORMATION.**

4 “A group health plan, and a health insurance issuer
5 offering group health insurance coverage in connection
6 with a group health plan, shall not deny eligibility to a
7 group or adjust premium or contribution rates for a group
8 on the basis of protected genetic information concerning
9 an individual in the group (or information about a request
10 for or the receipt of genetic services by such individual
11 or family member of such individual).”.

12 (B) CONFORMING AMENDMENTS.—

13 (i) Section 702(b)(2)(A) of the Em-
14 ployee Retirement Income Security Act of
15 1974 (29 U.S.C. 1182(b)) is amended to
16 read as follows:

17 “(A) to restrict the amount that an em-
18 ployer may be charged for coverage under a
19 group health plan, except as provided in section
20 714; or”.

21 (ii) Section 732(a) of the Employee
22 Retirement Income Security Act of 1974
23 (29 U.S.C. 1191a(a)) is amended by strik-
24 ing “section 711” and inserting “sub-
25 sections (a)(1)(F), (b) (with respect to
26 cases relating to genetic information or in-

1 formation about a request or receipt of ge-
2 netic services by an individual or family
3 member of such individual), (c), (d), (e),
4 (f), or (g) of section 702, section 711 and
5 section 714”.

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

11 “(c) GENETIC TESTING.—

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

18 “(2) RULE OF CONSTRUCTION.—Nothing in
19 this part shall be construed to limit the authority of
20 a health care professional, who is providing treat-
21 ment with respect to an individual and who is em-
22 ployed by a group health plan or a health insurance
23 issuer, to request that such individual or family
24 member of such individual undergo a genetic test.
25 Such a health care professional shall not require

1 that such individual or family member undergo a ge-
2 netic test.

3 “(d) COLLECTION OF PROTECTED GENETIC INFOR-
4 MATION.—Except as provided in subsections (f) and (g),
5 a group health plan, or a health insurance issuer offering
6 health insurance coverage in connection with a group
7 health plan, shall not request, require, collect, or purchase
8 protected genetic information concerning an individual (or
9 information about a request for or the receipt of genetic
10 services by such individual or family member of such indi-
11 vidual).

12 “(e) DISCLOSURE OF PROTECTED GENETIC INFOR-
13 MATION.—A group health plan, or a health insurance
14 issuer offering health insurance coverage in connection
15 with a group health plan, shall not disclose protected ge-
16 netic information about an individual (or information
17 about a request for or the receipt of genetic services by
18 such individual or family member of such individual) to—

19 “(1) any entity that is a member of the same
20 controlled group as such issuer or plan sponsor of
21 such group health plan;

22 “(2) any other group health plan or health in-
23 surance issuer or any insurance agent, third party
24 administrator, or other person subject to regulation
25 under State insurance laws;

1 “(3) the Medical Information Bureau or any
2 other person that collects, compiles, publishes, or
3 otherwise disseminates insurance information;

4 “(4) the individual’s employer or any plan spon-
5 sor; or

6 “(5) any other person the Secretary may speci-
7 fy in regulations.

8 “(f) INFORMATION FOR PAYMENT FOR GENETIC
9 SERVICES.—

10 “(1) IN GENERAL.—With respect to payment
11 for genetic services conducted concerning an indi-
12 vidual or the coordination of benefits, a group health
13 plan, or a health insurance issuer offering group
14 health insurance coverage in connection with a group
15 health plan, may request that the individual provide
16 the plan or issuer with evidence that such services
17 were performed.

18 “(2) RULE OF CONSTRUCTION.—Nothing in
19 paragraph (1) shall be construed to—

20 “(A) permit a group health plan or health
21 insurance issuer to request (or require) the re-
22 sults of the services referred to in such para-
23 graph; or

24 “(B) require that a group health plan or
25 health insurance issuer make payment for serv-

1 ices described in such paragraph where the in-
2 dividual involved has refused to provide evi-
3 dence of the performance of such services pur-
4 suant to a request by the plan or issuer in ac-
5 cordance with such paragraph.

6 “(g) INFORMATION FOR PAYMENT OF OTHER
7 CLAIMS.—With respect to the payment of claims for bene-
8 fits other than genetic services, a group health plan, or
9 a health insurance issuer offering group health insurance
10 coverage in connection with a group health plan, may re-
11 quest that an individual provide protected genetic informa-
12 tion so long as such information—

13 “(1) is used solely for the payment of a claim;

14 “(2) is limited to information that is directly re-
15 lated to and necessary for the payment of such claim
16 and the claim would otherwise be denied but for the
17 protected genetic information; and

18 “(3) is used only by an individual (or individ-
19 uals) within such plan or issuer who needs access to
20 such information for purposes of payment of a
21 claim.

22 “(h) RULES OF CONSTRUCTION.—

23 “(1) COLLECTION OR DISCLOSURE AUTHORIZED
24 BY INDIVIDUAL.—The provisions of subsections (d)
25 (regarding collection) and (e) shall not apply to an

1 individual if the individual (or legal representative of
2 the individual) provides prior, knowing, voluntary,
3 and written authorization for the collection or disclo-
4 sure of protected genetic information.

5 “(2) DISCLOSURE FOR HEALTH CARE TREAT-
6 MENT.—Nothing in this section shall be construed to
7 limit or restrict the disclosure of protected genetic
8 information from a health care provider to another
9 health care provider for the purpose of providing
10 health care treatment to the individual involved.

11 “(i) DEFINITIONS.—In this section:

12 “(1) CONTROLLED GROUP.—The term ‘con-
13 trolled group’ means any group treated as a single
14 employer under subsection (b), (c), (m), or (o) of
15 section 414 of the Internal Revenue Code of 1986.

16 “(2) GROUP HEALTH PLAN, HEALTH INSUR-
17 ANCE ISSUER.—The terms ‘group health plan’ and
18 ‘health insurance issuer’ include a third party ad-
19 ministrator or other person acting for or on behalf
20 of such plan or issuer.”.

21 (c) ENFORCEMENT.—Section 502 (29 U.S.C. 1132)
22 is amended by adding at the end the following:

23 “(n) VIOLATION OF GENETIC DISCRIMINATION OR
24 GENETIC DISCLOSURE PROVISIONS.—In any action under
25 this section against any administrator of a group health

1 plan, or health insurance issuer offering group health in-
2 surance coverage in connection with a group health plan
3 (including any third party administrator or other person
4 acting for or on behalf of such plan or issuer) alleging
5 a violation of subsection (a)(1)(F), (b) (with respect to
6 cases relating to genetic information or information about
7 a request or receipt of genetic services by an individual
8 or family member of such individual), (c), (d), (e), (f), or
9 (g) of section 702, or section 714, the court may award
10 any appropriate legal or equitable relief. Such relief may
11 include a requirement for the payment of attorney’s fees
12 and costs, including the costs of expert witnesses.

13 “(o) CIVIL PENALTY.—The monetary provisions of
14 section 308(b)(2)(C) of Public Law 101–336 (42 U.S.C.
15 12188(b)(2)(C)) shall apply for purposes of the Secretary
16 enforcing the provisions referred to in subsection (n), ex-
17 cept that any such relief awarded shall be paid only into
18 the general fund of the Treasury.”.

19 (d) PREEMPTION.—Section 731 of the Employee Re-
20 tirement Income Security Act of 1974 (29 U.S.C. 1191)
21 is amended—

22 (1) in subsection (a)(1), by inserting “or (e)”
23 after “subsection (b)”; and

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

1 “(e) SPECIAL RULE IN CASE OF GENETIC INFORMA-
2 TION.—With respect to group health insurance coverage
3 offered by a health insurance issuer, the provisions of this
4 part relating to genetic information (including information
5 about a request for or the receipt of genetic services by
6 an individual or a family member of such individual) shall
7 not be construed to supersede any provision of State law
8 which establishes, implements, or continues in effect a
9 standard, requirement, or remedy that more completely—

10 “(1) protects the confidentiality of genetic in-
11 formation (including information about a request for
12 or the receipt of genetic services by an individual or
13 a family member of such individual) or the privacy
14 of an individual or a family member of the individual
15 with respect to genetic information (including infor-
16 mation about a request for or the receipt of genetic
17 services by an individual or a family member of such
18 individual) than does this part; or

19 “(2) prohibits discrimination on the basis of ge-
20 netic information than does this part.”.

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

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

1 “(A) the spouse of the individual;

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

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

8 “(6) GENETIC INFORMATION.—The term ‘ge-
9 netic information’ means information about genes,
10 gene products, or inherited characteristics that may
11 derive from an individual or a family member of
12 such individual (including information about a re-
13 quest for or the receipt of genetic services by such
14 individual or family member of such individual).

15 “(7) GENETIC SERVICES.—The term ‘genetic
16 services’ means health services, including genetic
17 tests, provided to obtain, assess, or interpret genetic
18 information for diagnostic and therapeutic purposes,
19 and for genetic education and counseling.

20 “(8) GENETIC TEST.—

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

1 “(B) CERTAIN TESTS.—Notwithstanding
2 subparagraph (A), the conducting of metabolic
3 tests that are not intended to reveal protected
4 genetic information shall not be considered a
5 violation of section 702(c) for purposes of such
6 subparagraph regardless of the results of the
7 tests. Test results that are protected genetic in-
8 formation shall be subject to the applicable pro-
9 visions of this part.

10 “(9) PROTECTED GENETIC INFORMATION.—The
11 term ‘protected genetic information’ means—

12 “(A) information about an individual’s ge-
13 netic tests;

14 “(B) information about genetic tests of
15 family members of the individual; or

16 “(C) information about the occurrence of a
17 disease or disorder in family members.”.

18 (f) LIMITATIONS WITH RESPECT TO DEFINITION.—
19 Section 702 of the Employee Retirement Income Security
20 Act of 1974 (29 U.S.C. 1182), as amended by subsection
21 (b), is further amended by adding at the end the following:

22 “(j) LIMITATIONS.—As defined in section 933(d)(9),
23 the term protected genetic information shall not include—

24 “(1) information about the sex or age of the in-
25 dividual;

1 “(2) information about chemical, blood, or urine
2 analyses of the individual, unless these analyses are
3 genetic tests; or

4 “(3) information about physical exams of the
5 individual, and other information that indicates the
6 current health status of the individual.”.

7 (g) AMENDMENT CONCERNING SUPPLEMENTAL EX-
8 CEPTED BENEFITS.—Section 732(c)(3) of the Employee
9 Retirement Income Security Act of 1974 (29 U.S.C.
10 1191a(c)(3)) is amended by inserting “, other than the
11 requirements of subsections (a)(1)(F), (b) (in cases relat-
12 ing to genetic information or information about a request
13 for or the receipt of genetic services by an individual or
14 a family member of such individual), (c), (d), (e), (f) and
15 (g) of section 702 and section 714,” after “The require-
16 ments of this part”.

17 (h) EFFECTIVE DATE.—

18 (1) IN GENERAL.—Except as provided in this
19 section, this section and the amendments made by
20 this section shall apply with respect to group health
21 plans for plan years beginning after October 1,
22 2003.

23 (2) SPECIAL RULE FOR COLLECTIVE BAR-
24 GAINING AGREEMENTS.—In the case of a group
25 health plan maintained pursuant to one or more col-

1 lective bargaining agreements between employee rep-
2 resentatives and one or more employers ratified be-
3 fore the date of the enactment of this Act, this sec-
4 tion and the amendments made by this section shall
5 not apply to plan years beginning before the later
6 of—

7 (A) the date on which the last of the col-
8 lective bargaining agreements relating to the
9 plan terminates (determined without regard to
10 any extension thereof agreed to after the date
11 of the enactment of this Act), or

12 (B) October 1, 2003.

13 For purposes of subparagraph (A), any plan amend-
14 ment made pursuant to a collective bargaining
15 agreement relating to the plan which amends the
16 plan solely to conform to any requirement of the
17 amendments made by this section shall not be treat-
18 ed as a termination of such collective bargaining
19 agreement.

20 **SEC. 812. AMENDMENTS TO THE PUBLIC HEALTH SERVICE**

21 **ACT.**

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

1 (1) PROHIBITION OF HEALTH INSURANCE DIS-
2 CRIMINATION ON THE BASIS OF PROTECTED GE-
3 NETIC INFORMATION OR GENETIC SERVICES.—

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

12 (B) NO DISCRIMINATION IN GROUP RATE
13 BASED ON PROTECTED GENETIC INFORMA-
14 TION.—

15 (i) IN GENERAL.—Subpart 2 of part
16 A of title XXVII of the Public Health
17 Service (42 U.S.C. 300gg-4 et seq.) is
18 amended by adding at the end the fol-
19 lowing:

20 **“SEC. 2707. PROHIBITING DISCRIMINATION AGAINST**
21 **GROUPS ON THE BASIS OF PROTECTED GE-**
22 **NETIC INFORMATION.**

23 “A group health plan, and a health insurance issuer
24 offering group health insurance coverage in connection
25 with a group health plan, shall not deny eligibility to a

1 group or adjust premium or contribution rates for a group
2 on the basis of protected genetic information concerning
3 an individual in the group (or information about a request
4 for or the receipt of genetic services by such individual
5 or family member of such individual).”.

6 (ii) CONFORMING AMENDMENTS.—

7 (I) Section 2702(b)(2)(A) of the
8 Public Health Service Act (42 U.S.C.
9 300gg-1(b)(2)(A)) is amended to read
10 as follows:

11 “(A) to restrict the amount that an em-
12 ployer may be charged for coverage under a
13 group health plan, except as provided in section
14 2707; or”.

15 (II) Section 2721(a) of the Pub-
16 lic Health Service Act (42 U.S.C.
17 300gg-21(a)) is amended by inserting
18 “(other than subsections (a)(1)(F),
19 (b) (with respect to cases relating to
20 genetic information or information
21 about a request or receipt of genetic
22 services by an individual or family
23 member of such individual), (c), (d),
24 (e), (f), or (g) of section 2702 and

1 section 2707)” after “subparts 1 and
2 3”.

3 (2) LIMITATIONS ON GENETIC TESTING AND ON
4 COLLECTION AND DISCLOSURE OF PROTECTED GE-
5 NETIC INFORMATION.—Section 2702 of the Public
6 Health Service Act (42 U.S.C. 300gg–1) is amended
7 by adding at the end the following:

8 “(c) GENETIC TESTING.—

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

15 “(2) RULE OF CONSTRUCTION.—Nothing in
16 this title shall be construed to limit the authority of
17 a health care professional, who is providing treat-
18 ment with respect to an individual and who is em-
19 ployed by a group health plan or a health insurance
20 issuer, to request that such individual or family
21 member of such individual undergo a genetic test.
22 Such a health care professional shall not require
23 that such individual or family member undergo a ge-
24 netic test.

1 “(d) COLLECTION OF PROTECTED GENETIC INFOR-
2 MATION.—Except as provided in subsections (f) and (g),
3 a group health plan, or a health insurance issuer offering
4 health insurance coverage in connection with a group
5 health plan, shall not request, require, collect, or purchase
6 protected genetic information concerning an individual (or
7 information about a request for or the receipt of genetic
8 services by such individual or family member of such indi-
9 vidual).

10 “(e) DISCLOSURE OF PROTECTED GENETIC INFOR-
11 MATION.—A group health plan, or a health insurance
12 issuer offering health insurance coverage in connection
13 with a group health plan, shall not disclose protected ge-
14 netic information about an individual (or information
15 about a request for or the receipt of genetic services by
16 such individual or family member of such individual) to—

17 “(1) any entity that is a member of the same
18 controlled group as such issuer or plan sponsor of
19 such group health plan;

20 “(2) any other group health plan or health in-
21 surance issuer or any insurance agent, third party
22 administrator, or other person subject to regulation
23 under State insurance laws;

1 “(3) the Medical Information Bureau or any
2 other person that collects, compiles, publishes, or
3 otherwise disseminates insurance information;

4 “(4) the individual’s employer or any plan spon-
5 sor; or

6 “(5) any other person the Secretary may speci-
7 fy in regulations.

8 “(f) INFORMATION FOR PAYMENT FOR GENETIC
9 SERVICES.—

10 “(1) IN GENERAL.—With respect to payment
11 for genetic services conducted concerning an indi-
12 vidual or the coordination of benefits, a group health
13 plan, or a health insurance issuer offering group
14 health insurance coverage in connection with a group
15 health plan, may request that the individual provide
16 the plan or issuer with evidence that such services
17 were performed.

18 “(2) RULE OF CONSTRUCTION.—Nothing in
19 paragraph (1) shall be construed to—

20 “(A) permit a group health plan or health
21 insurance issuer to request (or require) the re-
22 sults of the services referred to in such para-
23 graph; or

24 “(B) require that a group health plan or
25 health insurance issuer make payment for serv-

1 ices described in such paragraph where the in-
2 dividual involved has refused to provide evi-
3 dence of the performance of such services pur-
4 suant to a request by the plan or issuer in ac-
5 cordance with such paragraph.

6 “(g) INFORMATION FOR PAYMENT OF OTHER
7 CLAIMS.—With respect to the payment of claims for bene-
8 fits other than genetic services, a group health plan, or
9 a health insurance issuer offering group health insurance
10 coverage in connection with a group health plan, may re-
11 quest that an individual provide protected genetic informa-
12 tion so long as such information—

13 “(1) is used solely for the payment of a claim;

14 “(2) is limited to information that is directly re-
15 lated to and necessary for the payment of such claim
16 and the claim would otherwise be denied but for the
17 protected genetic information; and

18 “(3) is used only by an individual (or individ-
19 uals) within such plan or issuer who needs access to
20 such information for purposes of payment of a
21 claim.

22 “(h) RULES OF CONSTRUCTION.—

23 “(1) COLLECTION OR DISCLOSURE AUTHORIZED
24 BY INDIVIDUAL.—The provisions of subsections (d)
25 (regarding collection) and (e) shall not apply to an

1 individual if the individual (or legal representative
2 of the individual) provides prior, knowing, voluntary,
3 and written authorization for the collection or disclo-
4 sure of protected genetic information.

5 “(2) DISCLOSURE FOR HEALTH CARE TREAT-
6 MENT.—Nothing in this section shall be construed to
7 limit or restrict the disclosure of protected genetic
8 information from a health care provider to another
9 health care provider for the purpose of providing
10 health care treatment to the individual involved.

11 “(i) DEFINITIONS.—In this section:

12 “(1) CONTROLLED GROUP.—The term ‘con-
13 trolled group’ means any group treated as a single
14 employer under subsection (b), (c), (m), or (o) of
15 section 414 of the Internal Revenue Code of 1986.

16 “(2) GROUP HEALTH PLAN, HEALTH INSUR-
17 ANCE ISSUER.—The terms ‘group health plan’ and
18 ‘health insurance issuer’ include a third party ad-
19 ministrator or other person acting for or on behalf
20 of such plan or issuer.”.

21 (3) DEFINITIONS.—Section 2791(d) of the Pub-
22 lic Health Service Act (42 U.S.C. 300gg–91(d)) is
23 amended by adding at the end the following new
24 paragraphs:

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

3 “(A) the spouse of the individual;

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

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

10 “(16) GENETIC INFORMATION.—The term ‘ge-
11 netic information’ means information about genes,
12 gene products, or inherited characteristics that may
13 derive from an individual or a family member of
14 such individual (including information about a re-
15 quest for or the receipt of genetic services by such
16 individual or family member of such individual).

17 “(17) GENETIC SERVICES.—The term ‘genetic
18 services’ means health services, including genetic
19 tests, provided to obtain, assess, or interpret genetic
20 information for diagnostic and therapeutic purposes,
21 and for genetic education and counselling.

22 “(18) GENETIC TEST.—

23 “(A) IN GENERAL.—The term ‘genetic
24 test’ means the analysis of human DNA, RNA,
25 chromosomes, proteins, or metabolites that de-

1 tect genotypes, mutations, or chromosomal
2 changes.

3 “(B) CERTAIN TESTS.—Notwithstanding
4 subparagraph (A), the conducting of metabolic
5 tests that are not intended to reveal protected
6 genetic information shall not be considered a
7 violation of section 2702(c) or 2754(a) for pur-
8 poses of such subparagraph regardless of the
9 results of the tests. Test results that are pro-
10 tected genetic information shall be subject to
11 the applicable provisions of this title.

12 “(19) PROTECTED GENETIC INFORMATION.—
13 The term ‘protected genetic information’ means—

14 “(A) information about an individual’s ge-
15 netic tests;

16 “(B) information about genetic tests of
17 family members of the individual; or

18 “(C) information about the occurrence of a
19 disease or disorder in family members.”.

20 (4) LIMITATIONS WITH RESPECT TO DEFINI-
21 TION.—Section 2702 of the Public Health Service
22 Act (42 U.S.C. 300gg–1), as amended by paragraph
23 (2), is further amended by adding at the end the fol-
24 lowing:

1 “(j) LIMITATIONS.—As defined in section
2 2791(d)(19), the term protected genetic information shall
3 not include—

4 “(1) information about the sex or age of the in-
5 dividual;

6 “(2) information about chemical, blood, or urine
7 analyses of the individual, unless these analyses are
8 genetic tests; or

9 “(3) information about physical exams of the
10 individual, and other information that indicates the
11 current health status of the individual.”.

12 (b) AMENDMENT RELATING TO THE INDIVIDUAL
13 MARKET.—The first subpart 3 of part B of title XXVII
14 of the Public Health Service Act (42 U.S.C. 300gg–51 et
15 seq.) is amended—

16 (1) by redesignating such subpart as subpart 2;
17 and

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

19 **“SEC. 2753. PROHIBITION OF HEALTH INSURANCE DIS-**
20 **CRIMINATION AGAINST INDIVIDUALS ON THE**
21 **BASIS OF PROTECTED GENETIC INFORMA-**
22 **TION.**

23 “(a) INELIGIBILITY TO ENROLL.—A health insur-
24 ance issuer offering health insurance coverage in the indi-
25 vidual market shall not establish rules for eligibility to en-

1 roll in individual health insurance coverage that are based
 2 on protected genetic information concerning the individual
 3 (or information about a request for or the receipt of ge-
 4 netic services by such individual or family member of such
 5 individual).

6 “(b) IN PREMIUM RATES.—A health insurance issuer
 7 offering health insurance coverage in the individual mar-
 8 ket shall not adjust premium rates on the basis of pro-
 9 tected genetic information concerning an individual (or in-
 10 formation about a request for or the receipt of genetic
 11 services by such individual or family member of such indi-
 12 vidual).

13 **“SEC. 2754. LIMITATIONS ON GENETIC TESTING AND ON**
 14 **COLLECTION AND DISCLOSURE OF PRO-**
 15 **TECTED GENETIC INFORMATION.**

16 “(a) GENETIC TESTING.—

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

23 “(2) RULE OF CONSTRUCTION.—Nothing in
 24 this title shall be construed to limit the authority of
 25 a health care professional, who is providing treat-

1 ment with respect to an individual and who is em-
2 ployed by a group health plan or a health insurance
3 issuer, to request that such individual or family
4 member of such individual undergo a genetic test.
5 Such a health care professional shall not require
6 that such individual or family member undergo a ge-
7 netic test.

8 “(b) COLLECTION OF PROTECTED GENETIC INFOR-
9 MATION.—Except as provided in subsections (d) and (e),
10 a health insurance issuer offering health insurance cov-
11 erage in the individual market shall not request, require,
12 collect, or purchase protected genetic information con-
13 cerning an individual (or information about a request for
14 or the receipt of genetic services by such individual or fam-
15 ily member of such individual).

16 “(c) DISCLOSURE OF PROTECTED GENETIC INFOR-
17 MATION.—A health insurance issuer offering health insur-
18 ance coverage in the individual market shall not disclose
19 protected genetic information about an individual (or in-
20 formation about a request for or the receipt of genetic
21 services by such individual or family member of such indi-
22 vidual) to—

23 “(1) any entity that is a member of the same
24 controlled group as such issuer or plan sponsor of
25 such group health plan;

1 “(2) any other group health plan or health in-
2 surance issuer or any insurance agent, third party
3 administrator, or other person subject to regulation
4 under State insurance laws;

5 “(3) the Medical Information Bureau or any
6 other person that collects, compiles, publishes, or
7 otherwise disseminates insurance information;

8 “(4) the individual’s employer or any plan spon-
9 sor; or

10 “(5) any other person the Secretary may speci-
11 fy in regulations.

12 “(d) INFORMATION FOR PAYMENT FOR GENETIC
13 SERVICES.—

14 “(1) IN GENERAL.—With respect to payment
15 for genetic services conducted concerning an indi-
16 vidual or the coordination of benefits, a health insur-
17 ance issuer offering health insurance coverage in the
18 individual market may request that the individual
19 provide the plan or issuer with evidence that such
20 services were performed.

21 “(2) RULE OF CONSTRUCTION.—Nothing in
22 paragraph (1) shall be construed to—

23 “(A) permit a health insurance issuer to
24 request (or require) the results of the services
25 referred to in such paragraph; or

1 “(B) require that a health insurance issuer
2 make payment for services described in such
3 paragraph where the individual involved has re-
4 fused to provide evidence of the performance of
5 such services pursuant to a request by the plan
6 or issuer in accordance with such paragraph.

7 “(e) INFORMATION FOR PAYMENT OF OTHER
8 CLAIMS.—With respect to the payment of claims for bene-
9 fits other than genetic services, a health insurance issuer
10 offering health insurance coverage in the individual mar-
11 ket may request that an individual provide protected ge-
12 netic information so long as such information—

13 “(1) is used solely for the payment of a claim;

14 “(2) is limited to information that is directly re-
15 lated to and necessary for the payment of such claim
16 and the claim would otherwise be denied but for the
17 protected genetic information; and

18 “(3) is used only by an individual (or individ-
19 uals) within such plan or issuer who needs access to
20 such information for purposes of payment of a
21 claim.

22 “(f) RULES OF CONSTRUCTION.—

23 “(1) COLLECTION OR DISCLOSURE AUTHORIZED
24 BY INDIVIDUAL.—The provisions of subsections (c)
25 (regarding collection) and (d) shall not apply to an

1 individual if the individual (or legal representative of
2 the individual) provides prior, knowing, voluntary,
3 and written authorization for the collection or disclo-
4 sure of protected genetic information.

5 “(2) DISCLOSURE FOR HEALTH CARE TREAT-
6 MENT.—Nothing in this section shall be construed to
7 limit or restrict the disclosure of protected genetic
8 information from a health care provider to another
9 health care provider for the purpose of providing
10 health care treatment to the individual involved.

11 “(g) DEFINITIONS.—In this section:

12 “(1) CONTROLLED GROUP.—The term ‘con-
13 trolled group’ means any group treated as a single
14 employer under subsection (b), (c), (m), or (o) of
15 section 414 of the Internal Revenue Code of 1986.

16 “(2) GROUP HEALTH PLAN, HEALTH INSUR-
17 ANCE ISSUER.—The terms ‘group health plan’ and
18 ‘health insurance issuer’ include a third party ad-
19 ministrator or other person acting for or on behalf
20 of such plan or issuer.”.

21 (c) ENFORCEMENT.—

22 (1) GROUP PLANS.—Section 2722 of the Public
23 Health Service Act (42 U.S.C. 300gg–22) is amend-
24 ed by adding at the end the following:

1 “(c) VIOLATION OF GENETIC DISCRIMINATION OR
2 GENETIC DISCLOSURE PROVISIONS.—In any action under
3 this section against any administrator of a group health
4 plan, or health insurance issuer offering group health in-
5 surance coverage in connection with a group health plan
6 (including any third party administrator or other person
7 acting for or on behalf of such plan or issuer) alleging
8 a violation of subsections (a)(1)(F), (b) (with respect to
9 cases relating to genetic information or information about
10 a request or receipt of genetic services by an individual
11 or family member of such individual), (c), (d), (e), (f), or
12 (g) of section 2702 and section 2707 the court may award
13 any appropriate legal or equitable relief. Such relief may
14 include a requirement for the payment of attorney’s fees
15 and costs, including the costs of expert witnesses.

16 “(d) CIVIL PENALTY.—The monetary provisions of
17 section 308(b)(2)(C) of Public Law 101–336 (42 U.S.C.
18 12188(b)(2)(C)) shall apply for purposes of the Secretary
19 enforcing the provisions referred to in subsection (c), ex-
20 cept that any such relief awarded shall be paid only into
21 the general fund of the Treasury.”.

22 (2) INDIVIDUAL PLANS.—Section 2761 of the
23 Public Health Service Act (42 U.S.C. 300gg–45) is
24 amended by adding at the end the following:

1 “(c) VIOLATION OF GENETIC DISCRIMINATION OR
 2 GENETIC DISCLOSURE PROVISIONS.—In any action under
 3 this section against any health insurance issuer offering
 4 health insurance coverage in the individual market (in-
 5 cluding any other person acting for or on behalf of such
 6 issuer) alleging a violation of sections 2753 and 2754 the
 7 court in which the action is commenced may award any
 8 appropriate legal or equitable relief. Such relief may in-
 9 clude a requirement for the payment of attorney’s fees and
 10 costs, including the costs of expert witnesses.

11 “(d) CIVIL PENALTY.—The monetary provisions of
 12 section 308(b)(2)(C) of Public Law 101–336 (42 U.S.C.
 13 12188(b)(2)(C)) shall apply for purposes of the Secretary
 14 enforcing the provisions referred to in subsection (c), ex-
 15 cept that any such relief awarded shall be paid only into
 16 the general fund of the Treasury.”.

17 (d) PREEMPTION.—

18 (1) GROUP MARKET.—Section 2723 of the Pub-
 19 lic Health Service Act (42 U.S.C. 300gg–23) is
 20 amended—

21 (A) in subsection (a)(1), by inserting “or
 22 (e)” after “subsection (b)”; and

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

24 “(e) SPECIAL RULE IN CASE OF GENETIC INFORMA-
 25 TION.—With respect to group health insurance coverage

1 offered by a health insurance issuer, the provisions of this
 2 part relating to genetic information (including information
 3 about a request for or the receipt of genetic services by
 4 an individual or a family member of such individual) shall
 5 not be construed to supersede any provision of State law
 6 which establishes, implements, or continues in effect a
 7 standard, requirement, or remedy that more completely—

8 “(1) protects the confidentiality of genetic in-
 9 formation (including information about a request for
 10 or the receipt of genetic services by an individual or
 11 a family member of such individual) or the privacy
 12 of an individual or a family member of the individual
 13 with respect to genetic information (including infor-
 14 mation about a request for or the receipt of genetic
 15 services by an individual or a family member of such
 16 individual) than does this part; or

17 “(2) prohibits discrimination on the basis of ge-
 18 netic information than does this part.”.

19 (2) INDIVIDUAL MARKET.—Section 2762 of the
 20 Public Health Service Act (42 U.S.C. 300gg–46) is
 21 amended—

22 (A) in subsection (a), by inserting “and ex-
 23 cept as provided in subsection (e),” after “Sub-
 24 ject to subsection (b),”; and

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

1 “(c) SPECIAL RULE IN CASE OF GENETIC INFORMA-
2 TION.—With respect to individual health insurance cov-
3 erage offered by a health insurance issuer, the provisions
4 of this part (or part C insofar as it applies to this part)
5 relating to genetic information (including information
6 about a request for or the receipt of genetic services by
7 an individual or a family member of such individual) shall
8 not be construed to supersede any provision of State law
9 (as defined in section 2723(d)) which establishes, imple-
10 ments, or continues in effect a standard, requirement, or
11 remedy that more completely—

12 “(1) protects the confidentiality of genetic in-
13 formation (including information about a request for
14 or the receipt of genetic services of an individual or
15 a family member of such individual) or the privacy
16 of an individual or a family member of the individual
17 with respect to genetic information (including infor-
18 mation about a request for or the receipt of genetic
19 services by an individual or a family member of such
20 individual) than does this part (or part C insofar as
21 it applies to this part); or

22 “(2) prohibits discrimination on the basis of ge-
23 netic information than does this part (or part C in-
24 sofar as it applies to this part).”.

1 (e) ELIMINATION OF OPTION OF NON-FEDERAL
 2 GOVERNMENTAL PLANS TO BE EXCEPTED FROM RE-
 3 QUIREMENTS CONCERNING GENETIC INFORMATION.—

4 Section 2721(b)(2) of the Public Health Service Act (42
 5 U.S. C. 300gg–21(b)(2)) is amended—

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

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

10 “(D) ELECTION NOT APPLICABLE TO RE-
 11 QUIREMENTS CONCERNING GENETIC INFORMA-
 12 TION.—The election described in subparagraph
 13 (A) shall not be available with respect to the
 14 provisions of subsections (a)(1)(F), (c), (d), (e),
 15 (f), and (g) of section 2702 and section 2707,
 16 and the provisions of section 2702(b) to the ex-
 17 tent that they apply to genetic information (or
 18 information about a request for or the receipt
 19 of genetic services by an individual or a family
 20 member of such individual).”.

21 (f) AMENDMENT CONCERNING SUPPLEMENTAL EX-
 22 CEPTED BENEFITS.—

23 (1) GROUP MARKET.—Section 2721(d)(3) of
 24 the Public Health Service Act (42 U.S.C. 300gg–
 25 23(d)(3)) is amended by inserting “, other than the

1 requirements of subsections (a)(1)(F), (b) (in cases
2 relating to genetic information or information about
3 a request for or the receipt of genetic services by an
4 individual or a family member of such individual)),
5 (c), (d), (e), (f) and (g) of section 2702 and section
6 2707,” after “The requirements of this part”.

7 (2) INDIVIDUAL MARKET.—Section 2763(b) of
8 the Public Health Service Act (42 U.S.C. 300gg–
9 47(b)) is amended—

10 (A) by striking “The requirements of this
11 part” and inserting the following:

12 “(1) IN GENERAL.—Except as provided in para-
13 graph (2), the requirements of this part”; and

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

15 “(2) LIMITATION.—The requirements of sec-
16 tions 2753 and 2754 shall apply to excepted benefits
17 described in section 2791(c)(4).”.

18 (g) EFFECTIVE DATE.—

19 (1) IN GENERAL.—The amendments made by
20 this section shall apply with respect to—

21 (A) group health plans, and health insur-
22 ance coverage offered in connection with group
23 health plans, for plan years beginning; and

1 (B) health insurance coverage offered,
2 sold, issued, renewed, in effect, or operated in
3 the individual market, after;
4 October 1, 2003.

5 (2) SPECIAL RULE FOR COLLECTIVE BAR-
6 GAINING AGREEMENTS.—In the case of a group
7 health plan maintained pursuant to one or more col-
8 lective bargaining agreements between employee rep-
9 resentatives and one or more employers ratified be-
10 fore the date of the enactment of this Act, the
11 amendments made by this section shall not apply to
12 plan years beginning before the later of—

13 (A) the date on which the last of the col-
14 lective bargaining agreements relating to the
15 plan terminates (determined without regard to
16 any extension thereof agreed to after the date
17 of the enactment of this Act); or

18 (B) October 1, 2003.

19 For purposes of subparagraph (A), any plan amend-
20 ment made pursuant to a collective bargaining
21 agreement relating to the plan which amends the
22 plan solely to conform to any requirement of the
23 amendments made by this section shall not be treat-
24 ed as a termination of such collective bargaining
25 agreement.

1 **SEC. 813. AMENDMENTS TO INTERNAL REVENUE CODE OF**
 2 **1986.**

3 (a) **PROHIBITION OF HEALTH INSURANCE DISCRIMI-**
 4 **NATION ON THE BASIS OF GENETIC SERVICES OR PRO-**
 5 **TECTED GENETIC INFORMATION.—**

6 (1) **NO ENROLLMENT RESTRICTION FOR GE-**
 7 **NETIC SERVICES.—**Section 9802(a)(1)(F) of the In-
 8 ternal Revenue Code of 1986 is amended by insert-
 9 ing before the period “(or information about a re-
 10 quest for or the receipt of genetic services by such
 11 individual or family member of such individual)”.

12 (2) **NO DISCRIMINATION IN GROUP RATE BASED**
 13 **ON PROTECTED GENETIC INFORMATION.—**

14 (A) **IN GENERAL.—**Subchapter B of chap-
 15 ter 100 of the Internal Revenue Code of 1986
 16 is amended by adding at the end the following:

17 **“SEC. 9813. PROHIBITING DISCRIMINATION AGAINST**
 18 **GROUPS ON THE BASIS OF PROTECTED GE-**
 19 **NETIC INFORMATION.**

20 “A group health plan shall not deny eligibility to a
 21 group or adjust premium or contribution rates for a group
 22 on the basis of protected genetic information concerning
 23 an individual in the group (or information about a request
 24 for or the receipt of genetic services by such individual
 25 or family member of such individual).”.

26 (B) **CONFORMING AMENDMENTS.—**

1 (i) Section 9802(b)(2)(A) of the Inter-
 2 nal Revenue Code of 1986 is amended to
 3 read as follows:

4 “(A) to restrict the amount that an em-
 5 ployer may be charged for coverage under a
 6 group health plan, except as provided in section
 7 9813; or”.

8 (ii) Section 9831(a) of the Internal
 9 Revenue Code of 1986 is amended by in-
 10 sserting “(other than subsections (a)(1)(F),
 11 (b) (with respect to cases relating to ge-
 12 netic information or information about a
 13 request or receipt of genetic services by an
 14 individual or family member of such indi-
 15 vidual), (d), (e), (f), (g), or (h) of section
 16 9802 or section 9813) after “chapter”.

17 (b) LIMITATIONS ON GENETIC TESTING AND ON
 18 COLLECTION AND DISCLOSURE OF PROTECTED GENETIC
 19 INFORMATION.—Section 9802 of the Internal Revenue
 20 Code of 1986 is amended by adding at the end the fol-
 21 lowing:

22 “(d) GENETIC TESTING.—

23 “(1) LIMITATION ON REQUESTING OR REQUIR-
 24 ING GENETIC TESTING.—A group health plan may

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

3 “(2) RULE OF CONSTRUCTION.—Nothing in
4 this chapter shall be construed to limit the authority
5 of a health care professional, who is providing treat-
6 ment with respect to an individual and who is em-
7 ployed by a group health plan, to request that such
8 individual or family member of such individual un-
9 dergo a genetic test. Such a health care professional
10 shall not require that such individual or family mem-
11 ber undergo a genetic test.

12 “(e) COLLECTION OF PROTECTED GENETIC INFOR-
13 MATION.—Except as provided in subsections (g) and (h),
14 a group health plan shall not request, require, collect, or
15 purchase protected genetic information concerning an in-
16 dividual (or information about a request for or the receipt
17 of genetic services by such individual or family member
18 of such individual).

19 “(f) DISCLOSURE OF PROTECTED GENETIC INFOR-
20 MATION.—A group health plan shall not disclose protected
21 genetic information about an individual (or information
22 about a request for or the receipt of genetic services by
23 such individual or family member of such individual) to—

1 “(1) any entity that is a member of the same
2 controlled group as such issuer or plan sponsor of
3 such group health plan;

4 “(2) any other group health plan or health in-
5 surance issuer or any insurance agent, third party
6 administrator, or other person subject to regulation
7 under State insurance laws;

8 “(3) the Medical Information Bureau or any
9 other person that collects, compiles, publishes, or
10 otherwise disseminates insurance information;

11 “(4) the individual’s employer or any plan spon-
12 sor; or

13 “(5) any other person the Secretary may speci-
14 fy in regulations.

15 “(g) INFORMATION FOR PAYMENT FOR GENETIC
16 SERVICES.—

17 “(1) IN GENERAL.—With respect to payment
18 for genetic services conducted concerning an indi-
19 vidual or the coordination of benefits, a group health
20 plan may request that the individual provide the
21 plan with evidence that such services were per-
22 formed.

23 “(2) RULE OF CONSTRUCTION.—Nothing in
24 paragraph (1) shall be construed to—

1 “(A) permit a group health plan to request
2 (or require) the results of the services referred
3 to in such paragraph; or

4 “(B) require that a group health plan
5 make payment for services described in such
6 paragraph where the individual involved has re-
7 fused to provide evidence of the performance of
8 such services pursuant to a request by the plan
9 in accordance with such paragraph.

10 “(h) INFORMATION FOR PAYMENT OF OTHER
11 CLAIMS.—With respect to the payment of claims for bene-
12 fits other than genetic services, a group health plan may
13 request that an individual provide protected genetic infor-
14 mation so long as such information—

15 “(1) is used solely for the payment of a claim;

16 “(2) is limited to information that is directly re-
17 lated to and necessary for the payment of such claim
18 and the claim would otherwise be denied but for the
19 protected genetic information; and

20 “(3) is used only by an individual (or individ-
21 uals) within such plan or issuer who needs access to
22 such information for purposes of payment of a
23 claim.

24 “(i) RULES OF CONSTRUCTION.—

1 “(1) COLLECTION OR DISCLOSURE AUTHORIZED
2 BY INDIVIDUAL.—The provisions of subsections (e)
3 (regarding collection) and (f) shall not apply to an
4 individual if the individual (or legal representative
5 of, the individual) provides prior, knowing, vol-
6 untary, and written authorization for the collection
7 or disclosure of protected genetic information.

8 “(2) DISCLOSURE FOR HEALTH CARE TREAT-
9 MENT.—Nothing in this section shall be construed to
10 limit or restrict the disclosure of protected genetic
11 information from a health care provider to another
12 health care provider for the purpose of providing
13 health care treatment to the individual involved.

14 “(j) DEFINITIONS.—In this section:

15 “(1) CONTROLLED GROUP.—The term ‘con-
16 trolled group’ means any group treated as a single
17 employer under subsections (b), (c), (m), or (o) of
18 section 414.

19 “(2) GROUP HEALTH PLAN, HEALTH INSUR-
20 ANCE ISSUER.—The terms ‘group health plan’ and
21 ‘health insurance issuer’ include a third party ad-
22 ministrator or other person acting for or on behalf
23 of such plan or issuer.”.

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

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

6 “(A) the spouse of the individual;

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

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

13 “(7) GENETIC INFORMATION.—The term ‘ge-
14 netic information’ means information about genes,
15 gene products, or inherited characteristics that may
16 derive from an individual or a family member of
17 such individual (including information about a re-
18 quest for or the receipt of genetic services by such
19 individual or family member of such individual).

20 “(8) GENETIC SERVICES.—The term ‘genetic
21 services’ means health services, including genetic
22 tests, provided to obtain, assess, or interpret genetic
23 information for diagnostic and therapeutic purposes,
24 and for genetic education and counseling.

25 “(9) GENETIC TEST.—

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

6 “(B) CERTAIN TESTS.—Notwithstanding
7 subparagraph (A), the conducting of metabolic
8 tests that are not intended to reveal protected
9 genetic information shall not be considered a
10 violation of section 9802(d) for purposes of
11 such subparagraph regardless of the results of
12 the tests. Test results that are protected genetic
13 information shall be subject to the applicable
14 provisions of this chapter.

15 “(10) PROTECTED GENETIC INFORMATION.—
16 The term ‘protected genetic information’ means—

17 “(A) information about an individual’s ge-
18 netic tests;

19 “(B) information about genetic tests of
20 family members of the individual; or

21 “(C) information about the occurrence of a
22 disease or disorder in family members.

23 (d) LIMITATIONS WITH RESPECT TO DEFINITION.—
24 Section 9802 of the Internal Revenue Code of 1986, as

1 amended by subsection (b), is further amended by adding
2 at the end the following:

3 “(k) LIMITATIONS.—As defined in section
4 9832(d)(10), the term protected genetic information shall
5 not include—

6 “(1) information about the sex or age of the in-
7 dividual;

8 “(2) information about chemical, blood, or urine
9 analyses of the individual, unless these analyses are
10 genetic tests; or

11 “(3) information about physical exams of the
12 individual, and other information that indicates the
13 current health status of the individual.”.

14 (e) EFFECTIVE DATE.—

15 (1) IN GENERAL.—Except as provided in this
16 section, this section and the amendments made by
17 this section shall apply with respect to group health
18 plans for plan years beginning after October 1,
19 2003.

20 (2) SPECIAL RULE FOR COLLECTIVE BAR-
21 GAINING AGREEMENTS.—In the case of a group
22 health plan maintained pursuant to one or more col-
23 lective bargaining agreements between employee rep-
24 resentatives and one or more employers ratified be-
25 fore the date of the enactment of this Act, this sec-

1 tion and the amendments made by this section shall
 2 not apply to plan years beginning before the later
 3 of—

4 (A) the date on which the last of the col-
 5 lective bargaining agreements relating to the
 6 plan terminates (determined without regard to
 7 any extension thereof agreed to after the date
 8 of the enactment of this Act), or

9 (B) October 1, 2003.

10 For purposes of subparagraph (A), any plan amend-
 11 ment made pursuant to a collective bargaining
 12 agreement relating to the plan which amends the
 13 plan solely to conform to any requirement of the
 14 amendments made by this section shall not be treat-
 15 ed as a termination of such collective bargaining
 16 agreement.

17 **SEC. 814. AMENDMENTS TO TITLE XVIII OF THE SOCIAL SE-**
 18 **CURITY ACT RELATING TO MEDIGAP.**

19 (a) NONDISCRIMINATION.—

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

23 “(E)(i) An issuer of a medicare supple-
 24 mental policy shall not deny or condition the
 25 issuance or effectiveness of the policy, and shall

1 not discriminate in the pricing of the policy (in-
 2 cluding the adjustment of premium rates) of an
 3 eligible individual on the basis of protected ge-
 4 netic information concerning the individual (or
 5 information about a request for, or the receipt
 6 of, genetic services by such individual or family
 7 member of such individual).

8 “(ii) For purposes of clause (i), the terms
 9 ‘family member’, ‘genetic services’, and ‘pro-
 10 tected genetic information’ shall have the mean-
 11 ings given such terms in subsection (v).”.

12 (2) EFFECTIVE DATE.—The amendment made
 13 by paragraph (1) shall apply with respect to a policy
 14 for policy years beginning after October 1, 2003.

15 (b) LIMITATIONS ON GENETIC TESTING AND ON
 16 COLLECTION AND DISCLOSURE OF PROTECTED GENETIC
 17 INFORMATION.—

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

21 “(v) LIMITATIONS ON GENETIC TESTING AND ON
 22 COLLECTION AND DISCLOSURE OF PROTECTED GENETIC
 23 INFORMATION.—

24 “(1) GENETIC TESTING.—

1 “(A) LIMITATION ON REQUESTING OR RE-
2 QUIRING GENETIC TESTING.—An issuer of a
3 medicare supplemental policy shall not request
4 or require an individual or a family member of
5 such individual to undergo a genetic test.

6 “(B) RULE OF CONSTRUCTION.—Nothing
7 in this title shall be construed to limit the au-
8 thority of a health care professional, who is pro-
9 viding treatment with respect to an individual
10 and who is employed by an issuer of a medicare
11 supplemental policy, to request that such indi-
12 vidual or family member of such individual un-
13 dergo a genetic test. Such a health care profes-
14 sional shall not require that such individual or
15 family member undergo a genetic test.

16 “(2) COLLECTION OF PROTECTED GENETIC IN-
17 FORMATION.—Except as provided in paragraphs (4)
18 and (5), an issuer of a medicare supplemental policy
19 shall not request, require, collect, or purchase pro-
20 tected genetic information concerning an individual
21 (or information about a request for or the receipt of
22 genetic services by such individual or family member
23 of such individual).

24 “(3) DISCLOSURE OF PROTECTED GENETIC IN-
25 FORMATION.—An issuer of a medicare supplemental

1 policy shall not disclose protected genetic informa-
2 tion about an individual (or information about a re-
3 quest for or the receipt of genetic services by such
4 individual or family member of such individual) to—

5 “(A) any entity that is a member of the
6 same controlled group as such issuer;

7 “(B) any issuer of a medicare supple-
8 mental policy, group health plan or health in-
9 surance issuer, or any insurance agent, third
10 party administrator, or other person subject to
11 regulation under State insurance laws;

12 “(C) the Medical Information Bureau or
13 any other person that collects, compiles, pub-
14 lishes, or otherwise disseminates insurance in-
15 formation;

16 “(D) the individual’s employer or any plan
17 sponsor; or

18 “(E) any other person the Secretary may
19 specify in regulations.

20 “(4) INFORMATION FOR PAYMENT FOR GE-
21 NETIC SERVICES.—

22 “(A) IN GENERAL.—With respect to pay-
23 ment for genetic services conducted concerning
24 an individual or the coordination of benefits, an
25 issuer of a medicare supplemental policy may

1 request that the individual provide the issuer
2 with evidence that such services were per-
3 formed.

4 “(B) RULE OF CONSTRUCTION.—Nothing
5 in subparagraph (A) shall be construed to—

6 “(i) permit an issuer to request (or
7 require) the results of the services referred
8 to in such subparagraph; or

9 “(ii) require that an issuer make pay-
10 ment for services described in such sub-
11 paragraph where the individual involved
12 has refused to provide evidence of the per-
13 formance of such services pursuant to a re-
14 quest by the issuer in accordance with such
15 subparagraph.

16 “(5) INFORMATION FOR PAYMENT OF OTHER
17 CLAIMS.—With respect to the payment of claims for
18 benefits other than genetic services, an issuer of a
19 medicare supplemental policy may request that an
20 individual provide protected genetic information so
21 long as such information—

22 “(A) is used solely for the payment of a
23 claim;

24 “(B) is limited to information that is di-
25 rectly related to and necessary for the payment

1 of such claim and the claim would otherwise be
2 denied but for the protected genetic informa-
3 tion; and

4 “(C) is used only by an individual (or indi-
5 viduals) within such issuer who needs access to
6 such information for purposes of payment of a
7 claim.

8 “(6) RULES OF CONSTRUCTION.—

9 “(A) COLLECTION OR DISCLOSURE AU-
10 THORIZED BY INDIVIDUAL.—The provisions of
11 paragraphs (2) (regarding collection) and (3)
12 shall not apply to an individual if the individual
13 (or legal representative of the individual) pro-
14 vides prior, knowing, voluntary, and written au-
15 thorization for the collection or disclosure of
16 protected genetic information.

17 “(B) DISCLOSURE FOR HEALTH CARE
18 TREATMENT.—Nothing in this section shall be
19 construed to limit or restrict the disclosure of
20 protected genetic information from a health
21 care provider to another health care provider
22 for the purpose of providing health care treat-
23 ment to the individual involved.

24 “(7) VIOLATION OF GENETIC DISCRIMINATION
25 OR GENETIC DISCLOSURE PROVISIONS.—In any ac-

1 tion under this subsection against any administrator
2 of a medicare supplemental policy (including any
3 third party administrator or other person acting for
4 or on behalf of such policy) alleging a violation of
5 this subsection, the court may award any appro-
6 priate legal or equitable relief. Such relief may in-
7 clude a requirement for the payment of attorney’s
8 fees and costs, including the costs of expert wit-
9 nesses.

10 “(8) CIVIL PENALTY.—The monetary provisions
11 of section 308(b)(2)(C) of Public Law 101–336 (42
12 U.S.C. 12188(b)(2)(C)) shall apply for purposes of
13 the Secretary enforcing the provisions of this sub-
14 section, except that any such relief awarded shall be
15 paid only into the general fund of the Treasury.

16 “(9) SPECIAL RULE IN CASE OF GENETIC IN-
17 FORMATION.—This subsection (relating to genetic
18 information or information about a request for, or
19 the receipt of, genetic services by an individual or a
20 family member of such individual) shall not be con-
21 strued to supersede any provision of State law which
22 establishes, implements, or continues in effect a
23 standard, requirement, or remedy that more com-
24 pletely—

1 “(A) protects the confidentiality of genetic
2 information (including information about a re-
3 quest for, or the receipt of, genetic services by
4 an individual or a family member of such indi-
5 vidual) or the privacy of an individual or a fam-
6 ily member of the individual with respect to ge-
7 netic information (including information about
8 a request for, or the receipt of, genetic services
9 by an individual or a family member of such in-
10 dividual) than does this subsection; or

11 “(B) prohibits discrimination on the basis
12 of genetic information than does this sub-
13 section.

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

15 “(A) CONTROLLED GROUP.—The term
16 ‘controlled group’ means any group treated as
17 a single employer under subsection (b), (c),
18 (m), or (o) of section 414 of the Internal Rev-
19 enue Code of 1986.

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

22 “(i) the spouse of the individual;

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

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

4 “(C) GENETIC INFORMATION.—The term
5 ‘genetic information’ means information about
6 genes, gene products, or inherited characteris-
7 tics that may derive from an individual or a
8 family member of such individual (including in-
9 formation about a request for, or the receipt of,
10 genetic services by such individual or family
11 member of such individual).

12 “(D) GENETIC SERVICES.—The term ‘ge-
13 netic services’ means health services, including
14 genetic tests, provided to obtain, assess, or in-
15 terpret genetic information for diagnostic and
16 therapeutic purposes, and for genetic education
17 and counseling.

18 “(E) GENETIC TEST.—

19 “(i) IN GENERAL.—The term ‘genetic
20 test’ means the analysis of human DNA,
21 RNA, chromosomes, proteins, or metabo-
22 lites that detect genotypes, mutations, or
23 chromosomal changes.

24 “(ii) CERTAIN TESTS.—Notwith-
25 standing subparagraph (A), the conducting

1 of metabolic tests that are not intended to
2 reveal protected genetic information shall
3 not be considered a violation of paragraph
4 (1) regardless of the results of the tests.
5 Test results that are protected genetic in-
6 formation shall be subject to the applicable
7 provisions of this subsection.

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

13 “(G) PROTECTED GENETIC INFORMA-
14 TION.—The term ‘protected genetic informa-
15 tion’ means—

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

18 “(ii) information about genetic tests
19 of family members of the individual; or

20 “(iii) information about the occur-
21 rence of a disease or disorder in family
22 members.

23 (2) LIMITATIONS WITH RESPECT TO DEFINI-
24 TION.—Section 1882(v) of the Social Security Act

1 (42 U.S.C. 1395ss), as added by paragraph (1), is
2 amended by adding at the end the following:

3 “(11) LIMITATIONS.—As defined in paragraph
4 (10)(G), the term protected genetic information shall
5 not include—

6 “(A) information about the sex or age of
7 the individual;

8 “(B) information about chemical, blood, or
9 urine analyses of the individual, unless these
10 analyses are genetic tests; or

11 “(C) information about physical exams of
12 the individual, and other information that indi-
13 cates the current health status of the indi-
14 vidual.”.

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

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

22 (4) EFFECTIVE DATE.—The amendments made
23 by this subsection shall apply with respect to an
24 issuer of a medicare supplemental policy for policy
25 years beginning after October 1, 2003.

1 (c) TRANSITION PROVISIONS.—

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

11 (2) NAIC STANDARDS.—If, not later than June
12 30, 2003, the National Association of Insurance
13 Commissioners (in this subsection referred to as the
14 “NAIC”) modifies its NAIC Model Regulation relat-
15 ing to section 1882 of the Social Security Act (re-
16 ferred to in such section as the 1991 NAIC Model
17 Regulation, as subsequently modified) to conform to
18 the amendments made by this section, such revised
19 regulation incorporating the modifications shall be
20 considered to be the applicable NAIC model regula-
21 tion (including the revised NAIC model regulation
22 and the 1991 NAIC Model Regulation) for the pur-
23 poses of such section.

24 (3) SECRETARY STANDARDS.—If the NAIC
25 does not make the modifications described in para-

1 graph (2) within the period specified in such para-
2 graph, the Secretary of Health and Human Services
3 shall, not later than October 1, 2003, make the
4 modifications described in such paragraph and such
5 revised regulation incorporating the modifications
6 shall be considered to be the appropriate regulation
7 for the purposes of such section.

8 (4) DATE SPECIFIED.—

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

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

16 (ii) October 1, 2003.

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

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

24 (ii) having a legislature which is not
25 scheduled to meet in 2003 in a legislative

1 session in which such legislation may be
2 considered,
3 the date specified in this paragraph is the first
4 day of the first calendar quarter beginning after
5 the close of the first legislative session of the
6 State legislature that begins on or after July 1,
7 2003. For purposes of the previous sentence, in
8 the case of a State that has a 2-year legislative
9 session, each year of such session shall be
10 deemed to be a separate regular session of the
11 State legislature.

12 **Subtitle B—Prohibition of Employ-**
13 **ment Discrimination on the**
14 **Basis of Protected Genetic In-**
15 **formation**

16 **SEC. 821. DEFINITIONS.**

17 In this subtitle:

18 (1) EMPLOYEE; EMPLOYER; EMPLOYMENT
19 AGENCY; LABOR ORGANIZATION; MEMBER.—The
20 terms “employee”, “employer”, “employment agen-
21 cy”, and “labor organization” have the meanings
22 given such terms in section 701 of the Civil Rights
23 Act of 1964 (42 U.S.C. 2000e), except that the
24 terms “employee” and “employer” shall also include
25 the meanings given such terms in section 717 of the

1 Civil Rights Act of 1964 (42 U.S.C. 2000e–16). The
2 terms “employee” and “member” include an appli-
3 cant for employment and an applicant for member-
4 ship in a labor organization, respectively.

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

7 (A) the spouse of the individual;

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

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

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

24 (4) GENETIC SERVICES.—The term “genetic
25 services” means health services, including genetic

1 tests, provided to obtain, assess, or interpret genetic
2 information for diagnostic and therapeutic purposes,
3 and for genetic education and counseling.

4 (5) GENETIC TEST.—

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

10 (B) CERTAIN TESTS.—Notwithstanding
11 subparagraph (A), the conducting of metabolic
12 tests that are not intended to reveal protected
13 genetic information shall not be considered a
14 violation of 203(a)(3), 204(3), 205(3), or
15 206(3) regardless of the results of the tests.
16 Test results that are protected genetic informa-
17 tion shall be subject to the applicable provisions
18 of this subtitle.

19 (6) PROTECTED GENETIC INFORMATION.—The
20 term “protected genetic information” means—

21 (A) information about an individual’s ge-
22 netic tests;

23 (B) information about genetic tests of fam-
24 ily members of the individual; or

1 (C) information about the occurrence of a
2 disease or disorder in family members.

3 **SEC. 822. LIMITATIONS WITH RESPECT TO DEFINITION.**

4 As defined in section 821(6), the term protected ge-
5 netic information shall not include—

6 (1) information about the sex or age of the in-
7 dividual; or

8 (2) information about chemical, blood, or urine
9 analyses of the individual, unless these analyses are
10 genetic tests.

11 **SEC. 823. EMPLOYER PRACTICES.**

12 (a) IN GENERAL.—It shall be an unlawful employ-
13 ment practice for an employer (or a worker’s compensa-
14 tion insurance issuer acting on the employer’s behalf)—

15 (1) to fail or refuse to hire or to discharge any
16 individual, or otherwise to discriminate against any
17 individual with respect to the compensation, terms,
18 conditions, or privileges of employment of the indi-
19 vidual, because of protected genetic information with
20 respect to the individual or information about a re-
21 quest for or the receipt of genetic services by such
22 individual or family member of such individual;

23 (2) to limit, segregate, or classify the employees
24 of the employer in any way that would deprive or
25 tend to deprive any individual of employment oppor-

1 tunities or otherwise adversely affect the status of
2 the individual as an employee, because of protected
3 genetic information with respect to the individual, or
4 information about a request for or the receipt of ge-
5 netic services by such individual or family member
6 of such individual; or

7 (3) to request, require, collect or purchase pro-
8 tected genetic information with respect to an indi-
9 vidual or a family member of the individual except—

10 (A) where used for genetic monitoring of
11 biological effects of toxic substances in the
12 workplace, but only if—

13 (i) the employee has provided prior,
14 knowing, voluntary, and written authoriza-
15 tion;

16 (ii) the employee is informed of indi-
17 vidual monitoring results;

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

1 (iv) the employer, excluding any li-
2 censed health care professional that is in-
3 volved in the genetic monitoring program,
4 receives the results of the monitoring only
5 in aggregate terms that do not disclose the
6 identity of specific employees; or

7 (B) where health or genetic services are of-
8 fered by the employer and the employee pro-
9 vides prior, knowing, voluntary, and written au-
10 thorization, and only the employee or family
11 member of such employee receives the results of
12 such services; or

13 (C) with respect to an applicant who has
14 been given a conditional offer of employment or
15 to an employee, an employer may request, re-
16 quire, collect or purchase the information de-
17 scribed in section 821(6)(C) if—

18 (i) the request or requirement is con-
19 sistent with the Americans with Disabil-
20 ities Act of 1990 (42 U.S.C. 12101 et
21 seq.) or the Rehabilitation Act of 1973 (29
22 U.S.C. 701 et seq.);

23 (ii)(I) the information obtained is to
24 be used exclusively to assess whether fur-
25 ther medical evaluation is needed to diag-

1 nose a current disease, or medical condi-
2 tion or disorder; and

3 (II) such current disease, or medical
4 condition or disorder could prevent the ap-
5 plicant or employee from performing the
6 essential functions of the position desired
7 or held; and

8 (III) the information described in
9 such section will not be disclosed to per-
10 sons other than medical personnel involved
11 in or responsible for assessing whether fur-
12 ther medical evaluation is needed to diag-
13 nose a current disease, or medical condi-
14 tion or disorder, except as otherwise per-
15 mitted by this subtitle.

16 (b) LIMITATION.—In the case of protected genetic in-
17 formation to which subparagraph (A), (B), or (C) of sub-
18 section (a)(3) applies, such information may not be used
19 in violation of paragraph (1) or (2) of subsection (a).

20 **SEC. 824. EMPLOYMENT AGENCY PRACTICES.**

21 It shall be an unlawful employment practice for an
22 employment agency—

23 (1) to fail or refuse to refer for employment, or
24 otherwise to discriminate against, any individual be-
25 cause of protected genetic information with respect

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

4 (2) to limit, segregate, or classify individuals or
5 fail or refuse to refer for employment any individual
6 in any way that would deprive or tend to deprive any
7 individual of employment opportunities or would
8 limit the employment opportunities or otherwise ad-
9 versely affect the status of the individual as an em-
10 ployee, because of protected genetic information with
11 respect to the individual (or information about a re-
12 quest for or the receipt of genetic services by such
13 individual or family member of such individual);

14 (3) to request, require, collect or purchase pro-
15 tected genetic information with respect to an indi-
16 vidual (or information about a request for or the re-
17 ceipt of genetic services by such individual or family
18 member of such individual); or

19 (4) to cause or attempt to cause an employer to
20 discriminate against an individual in violation of this
21 subtitle.

22 **SEC. 825. LABOR ORGANIZATION PRACTICES.**

23 It shall be an unlawful employment practice for a
24 labor organization—

1 (1) to exclude or to expel from the membership
2 of the organization, or otherwise to discriminate
3 against, any individual because of protected genetic
4 information with respect to the individual (or infor-
5 mation about a request for or the receipt of genetic
6 services by such individual or family member of such
7 individual);

8 (2) to limit, segregate, or classify the members
9 of the organization, or fail or refuse to refer for em-
10 ployment any individual, in any way that would de-
11 prive or tend to deprive any individual of employ-
12 ment opportunities, or would limit the employment
13 opportunities or otherwise adversely affect the status
14 of the individual as an employee, because of pro-
15 tected genetic information with respect to the indi-
16 vidual (or information about a request for or the re-
17 ceipt of genetic services by such individual or family
18 member of such individual);

19 (3) to request, require, collect or purchase pro-
20 tected genetic information with respect to an indi-
21 vidual (or information about a request for or the re-
22 ceipt of genetic services by such individual or family
23 member of such individual); or

1 (4) to cause or attempt to cause an employer to
2 discriminate against an individual in violation of this
3 subtitle.

4 **SEC. 826. TRAINING PROGRAMS.**

5 It shall be an unlawful employment practice for any
6 employer, labor organization, or joint labor-management
7 committee controlling apprenticeship or other training or
8 retraining, including on-the-job training programs—

9 (1) to discriminate against any individual be-
10 cause of protected genetic information with respect
11 to the individual (or information about a request for
12 or the receipt of genetic services by such individual),
13 in admission to, or employment in, any program es-
14 tablished to provide apprenticeship or other training
15 or retraining;

16 (2) to limit, segregate, or classify the members
17 of the organization, or fail or refuse to refer for em-
18 ployment any individual, in any way that would de-
19 prive or tend to deprive any individual of employ-
20 ment opportunities, or would limit the employment
21 opportunities or otherwise adversely affect the status
22 of the individual as an employee, because of pro-
23 tected genetic information with respect to the indi-
24 vidual (or information about a request for or receipt

1 of genetic services by such individual or family mem-
2 ber of such individual);

3 (3) to request, require, collect or purchase pro-
4 tected genetic information with respect to an indi-
5 vidual (or information about a request for or receipt
6 of genetic services by such individual or family mem-
7 ber of such individual); or

8 (4) to cause or attempt to cause an employer to
9 discriminate against an individual in violation of this
10 subtitle.

11 **SEC. 827. MAINTENANCE AND DISCLOSURE OF PROTECTED**
12 **GENETIC INFORMATION.**

13 (a) MAINTENANCE OF PROTECTED GENETIC INFOR-
14 MATION.—If an employer (or a worker’s compensation in-
15 surance issuer acting on the employer’s behalf) possesses
16 protected genetic information about an employee (or infor-
17 mation about a request for or receipt of genetic services
18 by such employee or family member of such employee),
19 such information shall be treated and maintained as part
20 of the employee’s confidential medical records.

21 (b) DISCLOSURE OF PROTECTED GENETIC INFORMA-
22 TION.—An employer (or a worker’s compensation insur-
23 ance issuer acting on the employer’s behalf) shall not dis-
24 close protected genetic information (or information about

1 a request for or receipt of genetic services by such em-
2 ployee or family member of such employee) except—

3 (1) to the employee who is the subject of the in-
4 formation at the request of the employee;

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

10 (3) under legal compulsion of a Federal court
11 order, except that if the court order was secured
12 without the knowledge of the individual to whom the
13 information refers, the employer (or a worker's com-
14 pensation insurance issuer acting on the employer's
15 behalf) shall provide the individual with adequate
16 notice to challenge the court order unless the court
17 order also imposes confidentiality requirements; and

18 (4) to government officials who are inves-
19 tigating compliance with this subtitle if the informa-
20 tion is relevant to the investigation.

21 **SEC. 828. CIVIL ACTION.**

22 (a) IN GENERAL.—One or more employees, members
23 of a labor organization, or participants in training pro-
24 grams or a labor organization may bring an action in a
25 Federal or State court of competent jurisdiction against

1 an employer (or a worker's compensation insurance issuer
2 acting on the employer's behalf), employment agency,
3 labor organization, or joint labor-management committee
4 or training program who commits a violation of this sub-
5 title.

6 (b) ENFORCEMENT BY THE EQUAL EMPLOYMENT
7 OPPORTUNITY COMMISSION.—

8 (1) IN GENERAL.—The powers, remedies, and
9 procedures set forth in sections 705, 706, 707, 709,
10 710, and 717 of the Civil Rights Act of 1964 (42
11 U.S.C. 2000e-4, 2000e-5, 2000e-6, 2000e-8,
12 2000e-9, and 2000e-16) shall be the powers, reme-
13 dies, and procedures provided to the Equal Employ-
14 ment Opportunity Commission to enforce this sub-
15 title. The Commission may promulgate regulations
16 to implement these powers, remedies, and proce-
17 dures.

18 (2) EXHAUSTION OF REMEDIES.—Nothing in
19 this subsection shall be construed to require that an
20 individual exhaust the administrative remedies avail-
21 able through the Equal Employment Opportunity
22 Commission prior to commencing a civil action
23 under this section, except that if an individual files
24 a charge of discrimination with the Commission that
25 alleges a violation of this subtitle, the individual

1 shall exhaust the administrative remedies available
2 through the Commission prior to commencing a civil
3 action under this section.

4 (c) REMEDY.—A Federal or State court may award
5 any appropriate legal or equitable relief under this section.
6 Such relief may include a requirement for the payment
7 of attorney’s fees and costs, including the cost of experts.

8 **SEC. 829. CONSTRUCTION.**

9 Nothing in this subtitle shall be construed to—

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

15 (2) limit the rights or protections of an indi-
16 vidual under the Rehabilitation Act of 1973 (29
17 U.S.C. 701 et seq.);

18 (3) limit the rights or protections of an indi-
19 vidual under any other Federal or State statute that
20 provides equal or greater protection to an individual
21 than the rights accorded under this subtitle;

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

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

6 **SEC. 830. AUTHORIZATION OF APPROPRIATIONS.**

7 There are authorized to be appropriated such sums
8 as may be necessary to carry out this subtitle.

9 **SEC. 831. EFFECTIVE DATE.**

10 This subtitle shall become effective on October 1,
11 2003.

12 **Subtitle C—Miscellaneous**
13 **Provisions**

14 **SEC. 841. SEVERABILITY.**

15 If any provision of this subtitle, an amendment made
16 by this subtitle, or the application of such provision or
17 amendment to any person or circumstance is held to be
18 unconstitutional, the remainder of this subtitle, the
19 amendments made by this subtitle, and the application of
20 the provisions of such to any person or circumstance shall
21 not be affected thereby.

22 **TITLE IX—MEDICAL PRIVACY**

23 **SEC. 901. SHORT TITLE.**

24 This title may be cited as the “Protecting Americans’
25 Medical Privacy Act”.

1 **SEC. 902. PURPOSE.**

2 The purpose of this title is to restore patient privacy
3 protections essential for high-quality health care that were
4 undermined by the Bush Administration's August 2002
5 modifications of the December 2000 medical privacy rule.

6 **SEC. 903. RESTORATION OF PRIVACY PROTECTIONS.**

7 (a) CONSENT FOR USES OR DISCLOSURES TO CARRY
8 OUT TREATMENT, PAYMENT, OR HEALTH CARE OPER-
9 ATIONS.—

10 (1) IN GENERAL.—The modifications made to
11 sections 164.502, 164.506, and 164.532 of title 45,
12 Code of Federal Regulations, by the August 2002
13 medical privacy rule shall have no force or effect.

14 (2) CLARIFICATION REGARDING INSTANCES
15 WHEN CONSENT IS NOT REQUIRED.— In addition to
16 the circumstances described in the December 2000
17 medical privacy rule, and notwithstanding any provi-
18 sion to the contrary, such sections 164.502,
19 164.506, and 164.532 shall be construed and ap-
20 plied so as to permit a health care provider to use
21 or disclose an individual's protected health informa-
22 tion without obtaining the prior consent of the indi-
23 vidual in the following circumstances:

24 (A) A health care provider may use or dis-
25 close an individual's protected health informa-
26 tion to fill or dispense a prescription, search for

1 drug interactions related to that prescription,
2 and determine eligibility and obtain authoriza-
3 tion for payment regarding that prescription, if
4 the health care provider obtains written consent
5 from the individual as soon as practicable.

6 (B) A health care provider may use or dis-
7 close an individual's protected health informa-
8 tion to carry out treatment of that individual
9 if—

10 (i) the individual and the health care
11 provider have not had in-person commu-
12 nication regarding such treatment;

13 (ii) obtaining consent would be im-
14 practicable;

15 (iii) the health care provider deter-
16 mines, in the exercise of professional judg-
17 ment, that the individual's consent is clear-
18 ly inferred from the circumstances, such as
19 an order or referral from another health
20 care provider; and

21 (iv) the health care provider obtains
22 written consent from the individual as soon
23 as practicable.

24 (b) **MARKETING.**—

1 (1) IN GENERAL.—The modifications made by
2 the August 2002 medical privacy rule to the defini-
3 tion of the term “marketing” in section 164.501 of
4 title 45, Code of Federal Regulations, shall have no
5 force or effect.

6 (2) TREATMENT OF CERTAIN COMMUNICA-
7 TIONS.—The exception for oral communications in
8 paragraph (2)(i) of the definition of the term “mar-
9 keting” in section 164.501 of title 45, Code of Fed-
10 eral Regulations, as contained in the December 2000
11 medical privacy rule, shall have no force or effect.

12 (3) AUTHORIZATIONS FOR MARKETING.—Sec-
13 tion 164.508 of title 45, Code of Federal Regula-
14 tions, shall be construed and applied so as to require
15 that, if an authorization is required for a use or dis-
16 closure for marketing, the authorization shall be
17 considered invalid unless it—

18 (A) uses the term “marketing”;

19 (B) states that the purpose of the use or
20 disclosure involved is marketing;

21 (C) describes the specific marketing uses
22 and disclosures authorized, including whether
23 the protected health information involved—

24 (i) may be used for purposes internal
25 to the covered entity;

1 (ii) may be disclosed to, and used by,
2 a business associate of the covered entity;
3 and

4 (iii) may be disclosed to, and used by,
5 any person or entity other than a business
6 associate of the covered entity; and

7 (D) states that the use or disclosure of
8 protected health information for marketing will
9 directly result in remuneration to the covered
10 entity from a third party, in any case in which
11 a covered entity expects, or reasonably should
12 expect, that such remuneration will occur.

13 (c) PUBLIC HEALTH.—The modifications made to
14 section 164.512(b)(1)(iii) of title 45, Code of Federal Reg-
15 ulations, by the August 2002 medical privacy rule shall
16 have no force or effect.

17 **SEC. 904. DEFINITIONS; EFFECTIVE DATE.**

18 (a) IN GENERAL.—For purposes of this title:

19 (1) DECEMBER 2000 MEDICAL PRIVACY RULE.—
20 The term “December 2000 medical privacy rule”
21 means the final rule on standards for privacy of in-
22 dividually identifiable health information published
23 on December 28, 2000, in the Federal Register (65
24 Fed. Reg. 82462), including the provisions of title

1 45, Code of Federal Regulations, revised or added
2 by such rule.

3 (2) AUGUST 2002 MEDICAL PRIVACY RULE.—
4 The term “August 2002 medical privacy rule”
5 means the final rule, published on August 14, 2002,
6 in the Federal Register (67 Fed. Reg. 53182), that
7 modified the December 2000 medical privacy rule.

8 (b) OTHER TERMS DEFINED.—For purposes of this
9 title:

10 (1) BUSINESS ASSOCIATE; COVERED ENTITY;
11 HEALTH CARE PROVIDER.—The terms “business as-
12 sociate”, “covered entity”, and “health care pro-
13 vider” shall have the meanings given such terms in
14 section 160.103 of title 45, Code of Federal Regula-
15 tions, as contained in the December 2000 medical
16 privacy rule.

17 (2) DISCLOSURE; INDIVIDUAL, PROTECTED
18 HEALTH INFORMATION; TREATMENT; USE.—The
19 terms “disclosure”, “individual”, “protected health
20 information”, “treatment”, and “use” shall have the
21 meanings given such terms in section 164.501 of
22 title 45, Code of Federal Regulations, as contained
23 in the December 2000 medical privacy rule.

24 (c) EFFECTIVE DATE; NO REGULATIONS RE-
25 QUIRED.—This title shall take effect on the date of the

1 enactment of this Act and does not require the issuance
2 of regulations.

3 **TITLE X—PROTECTING**
4 **AMERICANS' PRIVACY**

5 **SEC. 1001. USE OF DEPARTMENT OF DEFENSE PERSONNEL**
6 **OR FUNDS TO COLLECT INTELLIGENCE OR**
7 **LAW ENFORCEMENT INFORMATION ON**
8 **UNITED STATES CITIZENS INSIDE THE**
9 **UNITED STATES.**

10 (a) PROHIBITION ON USE.—Except as specifically
11 authorized by law, no member of the Armed Forces or ci-
12 vilian employee of the Department of Defense may partici-
13 pate in the collection of information on United States citi-
14 zens inside the United States for intelligence or law en-
15 forcement purposes.

16 (b) PROHIBITION ON DEVELOPMENT OF TECH-
17 NOLOGIES.—The Department of Defense may not carry
18 out research, development, test, or evaluation on any tech-
19 nology whose primary purpose is the collection of informa-
20 tion on United States citizens inside the United States for
21 intelligence or law enforcement purposes.

22 (c) PROHIBITION ON USE OF FUNDS.—No funds ap-
23 propriated or otherwise made available to the Department
24 of Defense may be obligated or expended for an activity
25 prohibited by subsection (a) or (b).

1 **TITLE XI—ELECTION REFORM**

2 **SEC. 1101. REFORM.**

3 (a) HELP AMERICA VOTE ACT OF 2002.—To carry
4 out the Help America Vote Act of 2002 (Public Law 107–
5 252)—

6 (1) there is authorized to be appropriated and
7 there is appropriated, \$3,860,200,000, in the
8 amounts authorized under, and for the fiscal years
9 specified in, that Act (except for the provisions and
10 years specified in paragraph (2)); and

11 (2) there are authorized to be appropriated
12 such sums as may be necessary to carry out sections
13 104(e), 292(a) (for fiscal year 2007 and each subse-
14 quent fiscal year), 296 (for fiscal years 2004
15 through 2009), and 503(2) (for fiscal year 2004 and
16 each succeeding fiscal year) of that Act.

17 (b) HELP AMERICA VOTE FOUNDATION.—To carry
18 out chapter 1526 of part B of subtitle II of title 36,
19 United States Code (as added by the Help America Vote
20 Act of 2002)—

21 (1) there is authorized to be appropriated and
22 there is appropriated \$5,000,000 for fiscal year
23 2003; and

1 (2) there are authorized to be appropriated
2 such sums as may be necessary for each succeeding
3 fiscal year.

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