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**Dialectic Studies on the Appropriateness
of Utilizing Genetic Information as the Base of
Insurance Underwriting and the Determination
of Premium
—The U.S. Experience and Analysis**

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Abstract

On May 21, 2008, president George W. Bush signed the Genetic Information Nondiscrimination Act, which officially prohibits health insurers from obtaining and using genetic information as bases for calculating premiums or determine enrollment eligibility. Two major rationales behind this promulgation include first, responding to public's fear of a dystopia in which people's own DNA could be manipulated against them; and second, increased number of people are expected to take advantage of genetic testing and participate in genetic researches. In fact, starting from the mid-1990's, the issue regarding the appropriateness of the utilization of genetic information in the underwriting of life and health insurance has always been highly controversial, and the debate has never ceased. Many states address to this issue by enacting their own statutory law but the content and restriction laid in these state laws are diversified. This article, therefore, attempts to analysis such issue from the perspective of the nature of insurance transaction, insurance practice and general principles of insurance laws. Part II of this paper will discuss the na-

ture of genetic information and insurance transaction. Part III will probe into the disputes from theoretical aspect. Then, part IV will examine the existing Federal and state statutory laws as well as case laws addressing this issue. Part V aims to seek for a potential solution through general principles of insurance law and theories of insurance transaction. The entire discussion will conclude in part VI.

Keywords: genetic information, genetic discrimination, underwriting, duty to disclosure, risk classification