

Calendar No. 580

104TH CONGRESS
2^D Session

S. 2056

A BILL

To prohibit employment discrimination on the basis
of sexual orientation.

SEPTEMBER 5, 1996

Read twice and ordered to be placed on the calendar

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 5, 1996

Mr. KENNEDY (for himself, Mr. JEFFORDS, and Mr. LIEBERMAN) introduced the following bill; which was read twice and ordered to be placed on the calendar

A BILL

To prohibit employment discrimination on the basis of sexual orientation.

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.**

4 This Act may be cited as the “Employment Non-
5 discrimination Act of 1996”.

6 **SEC. 2. PURPOSES.**

7 It is the purpose of this Act—

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

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

7 (3) to invoke congressional powers, including
8 the powers to enforce the 14th amendment to the
9 Constitution and to regulate commerce, in order to
10 prohibit employment discrimination on the basis of
11 sexual orientation.

12 **SEC. 3. DEFINITIONS.**

13 As used in this Act:

14 (1) COMMISSION.—The term “Commission”
15 means the Equal Employment Opportunity Commis-
16 sion.

17 (2) COVERED ENTITY.—The term “covered en-
18 tity” means an employer, employment agency, labor
19 organization, joint labor management committee, an
20 entity to which section 717(a) of the Civil Rights
21 Act of 1964 (42 U.S.C. 2000e–16(a)) applies, an
22 employing authority to which section 302(a)(1) of
23 the Government Employee Rights Act of 1991 (2
24 U.S.C. 1202(a)(1)) applies, or an employing author-
25 ity to which section 201(a)(1) of the Congressional

1 Accountability Act of 1995 (2 U.S.C. 1311(a)(1))
2 applies.

3 (3) EMPLOYEE.—The term “employee” means
4 an employee, as defined in section 701(f) of the Civil
5 Rights Act of 1964 (42 U.S.C. 2000e(f)), an em-
6 ployee or applicant to whom section 717(a) of the
7 Civil Rights Act of 1964 applies, a Presidential ap-
8 pointee or State employee to whom section 302(a)(1)
9 of the Government Employee Rights Act of 1991 ap-
10 plies, and a covered employee to whom section
11 201(a)(1) of the Congressional Accountability Act of
12 1995 applies. The term “employee” does not include
13 an individual who volunteers to perform services if
14 the individual receives no compensation for such
15 services.

16 (4) EMPLOYER.—the term “employer” means a
17 person engaged in an industry affecting commerce
18 (as defined in section 701(h) of the Civil Rights Act
19 of 1964 (42 U.S.C. 2000e(h))) who has 15 or more
20 employees for each working day in each of 20 or
21 more calendar weeks in the current or preceding cal-
22 endar year, and any agent of such a person, but
23 such term does not include a bona fide private mem-
24 bership club (other than a labor organization) that

1 is exempt from taxation under section 501(c) of the
2 Internal Revenue Code of 1986.

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

7 (6) EMPLOYMENT OR EMPLOYMENT OPPORTU-
8 NITIES.—Except as provided in section 9(a)(1), the
9 term “employment or employment opportunities” in-
10 cludes job application procedures, hiring, advance-
11 ment, discharge, compensation, job training, or any
12 other term, condition, or privilege of employment.

13 (7) INDIVIDUAL.—The term “individual” in-
14 cludes an employee.

15 (8) LABOR ORGANIZATION.—The term “labor
16 organization” has the meaning given such term in
17 section 701(d) of the Civil Rights Act of 1964 (42
18 U.S.C. 2000e(d)).

19 (9) PERSON.—The term “person” has the
20 meaning given such term in section 701(a) of the
21 Civil Rights Act of 1964 (42 U.S.C. 2000e(a)).

22 (10) RELIGIOUS ORGANIZATION.—The term
23 “religious organization” means—

24 (A) a religious corporation, association, or
25 society; or

(B) a college, school, university, or other educational institution, not otherwise a religious organization, if—

(i) it is in whole or substantial part controlled, managed, owned, or supported by a religious corporation, association, or society; or

(ii) its curriculum is directed toward the propagation of a particular religion.

(11) SEXUAL ORIENTATION.—The term “sexual orientation” means homosexuality, bisexuality, or heterosexuality, whether such orientation is real or perceived.

(12) STATE.—The term “State” has the meaning given such term in section 701(i) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(i)).

SEC. 4. DISCRIMINATION PROHIBITED.

A covered entity shall not, with respect to the employment or employment opportunities of an individual—

(1) subject the individual to a different standard or different treatment on the basis of sexual orientation;

(2) discriminate against the individual based on the sexual orientation of a person with whom the in-

1 dividual is believed to associate or to have associ-
 2 ated; or

3 (3) otherwise discriminate against the individ-
 4 ual on the basis of sexual orientation.

5 **SEC. 5. BENEFITS.**

6 This Act does not apply to the provision of employee
 7 benefits to an individual for the benefit of such individ-
 8 ual's partner.

9 **SEC. 6. NO DISPARATE IMPACT.**

10 The fact that an employment practice has a disparate
 11 impact, as the term “disparate impact” is used in section
 12 703(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–
 13 2(k)), on the basis of sexual orientation does not establish
 14 a prima facie violation of this Act.

15 **SEC. 7. QUOTAS AND PREFERENTIAL TREATMENT PROHIB-**
 16 **ITED.**

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

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

22 **SEC. 8. RELIGIOUS EXEMPTION.**

23 (a) IN GENERAL.—Except as provided in subsection
 24 (b), this Act shall not apply to a religious organization.

1 (b) FOR-PROFIT ACTIVITIES.—This Act shall apply
 2 with respect to employment and employment opportunities
 3 that relate to any employment position that pertains solely
 4 to a religious organization’s for-profit activities subject to
 5 taxation under section 511(a) of the Internal Revenue
 6 Code of 1986.

7 **SEC. 9. NONAPPLICATION TO MEMBERS OF THE ARMED**
 8 **FORCES; VETERANS’ PREFERENCES.**

9 (a) ARMED FORCES.—

10 (1) EMPLOYMENT OR EMPLOYMENT OPPORTU-
 11 NITIES.—For purposes of this Act, the term “em-
 12 ployment or employment opportunities” does not
 13 apply to the relationship between the United States
 14 and members of the Armed Forces.

15 (2) ARMED FORCES.—As used in paragraph
 16 (1), the term “Armed Forces” means the Army,
 17 Navy, Air Force, Marine Corps, and Coast Guard.

18 (b) VETERANS’ PREFERENCES.—This Act does not
 19 repeal or modify any Federal, State, territorial, or local
 20 law creating a special right or preference for a veteran.

21 **SEC. 10. CONSTRUCTION.**

22 Nothing in this Act shall be construed to prohibit a
 23 covered entity from enforcing rules regarding nonprivate
 24 sexual conduct, if such rules of conduct are designed for,

1 and uniformly applied to, all individuals regardless of sex-
 2 ual orientation.

3 **SEC. 11. ENFORCEMENT.**

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

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, 303, and 304 of the Gov-
 13 ernment Employee Rights Act of 1991 (2
 14 U.S.C. 1202, 1203, and 1204);

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 such Act (2 U.S.C. 1202(a)(1)), respectively;

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

24 (3) the Board (as defined in section 101 of the
 25 Congressional Accountability Act of 1995 (2 U.S.C.

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

6 (4) the Attorney General shall have the same
7 powers as the Attorney General has to administer
8 and enforce—

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

11 (B) sections 302, 303, and 304 of the Gov-
12 ernment Employee Rights Act of 1991 (2
13 U.S.C. 1202, 1203, and 1204);

14 in the case of a claim alleged by such individual for
15 a violation of such title or of section 302(a)(1) of
16 such Act, respectively; and

17 (5) a court of the United States shall have the
18 same jurisdiction and powers as such court has to
19 enforce—

20 (A) title VII of the Civil Rights Act of
21 1964 (42 U.S.C. 2000e et seq.) in the case of
22 a claim alleged by such individual for a viola-
23 tion of such title;

24 (B) sections 302, 303, and 304 of the Gov-
25 ernment Employee Rights Act of 1991 (2

1 U.S.C. 1202, 1203, and 1204) in the case of a
2 claim alleged by such individual for a violation
3 of section 302(a)(1) of such Act; and

4 (C) the Congressional Accountability Act
5 of 1995 (2 U.S.C. 1301 et seq.) in the case of
6 a claim alleged by such individual for a viola-
7 tion of section 201(a)(1) of such Act.

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

11 (1) the procedures and remedies applicable for
12 a violation of title VII of the Civil Rights Act of
13 1964 (42 U.S.C. 2000e et seq.) in the case of a
14 claim alleged by such individual for a violation of
15 such title;

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

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

1 (c) OTHER APPLICABLE PROVISIONS.—With respect
2 to claims alleged by a covered employee (as defined in sec-
3 tion 101 of the Congressional Accountability Act of 1995
4 (2 U.S.C. 1301)) for a violation of this Act, title III of
5 the Congressional Accountability Act of 1995 (2 U.S.C.
6 1381 et seq.) shall apply in the same manner as such title
7 applies with respect to a claim alleged by such a covered
8 employee for a violation of section 201(a)(1) of such Act.

9 **SEC. 12. FEDERAL AND STATE IMMUNITY.**

10 (a) STATE IMMUNITY.—A State shall not be immune
11 under the eleventh amendment to the Constitution of the
12 United States from an action in a Federal court of com-
13 petent jurisdiction for a violation of this Act. In an action
14 against a State for a violation of this Act, remedies (in-
15 cluding remedies at law and in equity) are available for
16 the violation to the same extent as such remedies are avail-
17 able in an action against any public or private entity other
18 than a State.

19 (b) LIABILITY OF THE UNITED STATES.—The
20 United States shall be liable for all remedies (excluding
21 punitive damages) under this Act to the same extent as
22 a private person and shall be liable to the same extent
23 as a nonpublic party for interest to compensate for delay
24 in payment.

1 **SEC. 13. ATTORNEYS' FEES.**

2 In any action or administrative proceeding com-
3 menced pursuant to this Act, an entity described in section
4 11(a), in its discretion, may allow the prevailing party,
5 other than the United States, a reasonable attorney's fee,
6 including expert fees and other litigation expenses, and
7 costs. The United States shall be liable for the fees, ex-
8 penses and costs described in the preceding sentence to
9 the same extent as a private person.

10 **SEC. 14. RETALIATION AND COERCION PROHIBITED.**

11 (a) RETALIATION.—A covered entity shall not dis-
12 criminate against an individual because such individual
13 opposed any act or practice prohibited by this Act or be-
14 cause such individual made a charge, assisted, testified,
15 or participated in any manner in an investigation, proceed-
16 ing, or hearing under this Act.

17 (b) COERCION.—A person shall not coerce, intimi-
18 date, threaten, or interfere with any individual in the exer-
19 cise or enjoyment of, or on account of such individual's
20 having exercised, enjoyed, assisted, or encouraged the ex-
21 ercise or enjoyment of, any right granted or protected by
22 this Act.

23 **SEC. 15. POSTING NOTICES.**

24 A covered entity shall post notices for employees, ap-
25 plicants for employment, and members describing the ap-
26 plicable provisions of this Act in the manner prescribed

1 by, and subject to the penalty provided under, section 711
2 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–10).

3 **SEC. 16. REGULATIONS.**

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

7 (b) LIBRARIAN OF CONGRESS.—The Librarian of
8 Congress shall have authority to issue regulations to carry
9 out this Act with respect to employees of the Library of
10 Congress.

11 (c) BOARD.—The Board referred to in section
12 11(a)(3) shall have authority to issue regulations to carry
13 out this Act, in accordance with section 304 of the Con-
14 gressional Accountability Act of 1995 (2 U.S.C. 1384),
15 with respect to covered employees to which section
16 201(a)(1) of such Act applies (2 U.S.C. 1311(a)(1)).

17 **SEC. 17. RELATIONSHIP TO OTHER LAWS.**

18 This Act shall not invalidate or limit the rights, rem-
19 edies, or procedures available to an individual claiming
20 discrimination prohibited under any other Federal law or
21 any law of a State or political subdivision of a State.

22 **SEC. 18. SEVERABILITY.**

23 If any provision of this Act, or the application of such
24 provision to any person or circumstance, is held to be in-
25 valid, the remainder of this Act and the application of such

1 provision to other persons or circumstances shall not be
2 affected by such invalidity.

3 **SEC. 19. EFFECTIVE DATE.**

4 This Act shall take effect 60 days after the date of
5 enactment of this Act and shall not apply to conduct oc-
6 ccurring before such effective date.