S. 3065

To amend title 10, United States Code, to enhance the readiness of the Armed Forces by replacing the current policy concerning homosexuality in the Armed Forces, referred to as “Don’t Ask, Don’t Tell”, with a policy of nondiscrimination on the basis of sexual orientation.

IN THE SENATE OF THE UNITED STATES

MARCH 3, 2010

Mr. LIEBERMAN (for himself, Mr. LEVIN, Mr. UDALL of Colorado, Mrs. GILLIBRAND, Mr. BURRIS, Mr. BINGAMAN, Mrs. BOXER, Mr. WYDEN, Mr. LEAHY, Mr. SPECTER, Mr. MERKLEY, Mrs. FEINSTEIN, Mr. FRANKEN, and Mr. CARDIN) introduced the following bill; which was read twice and referred to the Committee on Armed Services

A BILL

To amend title 10, United States Code, to enhance the readiness of the Armed Forces by replacing the current policy concerning homosexuality in the Armed Forces, referred to as “Don’t Ask, Don’t Tell”, with a policy of nondiscrimination 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 “Military Readiness En-
5 hancement Act of 2010”.
SEC. 2. PURPOSE.

The purpose of this Act is to institute in the Armed Forces a policy of nondiscrimination based on sexual orientation.

SEC. 3. REPEAL OF 1993 POLICY CONCERNING HOMOSEXUALITY IN THE ARMED FORCES.

The following provisions of law are repealed:

(1) Section 654 of title 10, United States Code.

(2) Subsections (b), (c), and (d) of section 571 of the National Defense Authorization Act for Fiscal Year 1994 (10 U.S.C. 654 note).

SEC. 4. ESTABLISHMENT OF POLICY OF NONDISCRIMINATION BASED ON SEXUAL ORIENTATION IN THE ARMED FORCES.

(a) ESTABLISHMENT OF POLICY.—

(1) IN GENERAL.—Chapter 37 of title 10, United States Code, is amended by adding at the end the following new section:

“§656. Policy of nondiscrimination based on sexual orientation in the armed forces

“(a) POLICY.—The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, may not discriminate on the basis of sexual orientation against any member of the armed forces or against any person seeking to become a member of the armed forces.
“(b) Discrimination on Basis of Sexual Orientation.—For purposes of this section, discrimination on the basis of sexual orientation is—

“(1) in the case of a member of the armed forces, the taking of any personnel or administrative action (including any action relating to promotion, demotion, evaluation, selection for an award, selection for a duty assignment, transfer, or separation) in whole or in part on the basis of sexual orientation; and

“(2) in the case of a person seeking to become a member of the armed forces, denial of accession into the armed forces in whole or in part on the basis of sexual orientation.

“(c) Personnel and Administrative Policies and Action.—The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, may not establish, implement, or apply any personnel or administrative policy, or take any personnel or administrative action (including any policy or action relating to promotions, demotions, evaluations, selections for awards, selections for duty assignments, transfers, or separations) in whole or in part on the basis of sexual orientation.
“(d) **RULES AND POLICIES REGARDING CONDUCT.**—Nothing in this section prohibits the Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, from prescribing or enforcing regulations governing the conduct of members of the armed forces if the regulations are designed and applied without regard to sexual orientation.

“(e) **RE-ACCESSION OF OTHERWISE QUALIFIED PERSONS PERMITTED.**—Any person separated from the armed forces on the basis of sexual orientation in accordance with laws and regulations in effect before the date of the enactment of this section, if otherwise qualified for re-accession into the armed forces, shall not be prohibited from re-accession into the armed forces on the sole basis of such separation.

“(f) **SEXUAL ORIENTATION.**—In this section, the term ‘sexual orientation’ means heterosexuality, homosexuality, or bisexuality, whether the orientation is real or perceived, and includes statements and consensual sexual conduct that is not otherwise illegal manifesting heterosexuality, homosexuality, or bisexuality.”.

(2) **CLERICAL AMENDMENTS.**—The table of sections at the beginning of chapter 37 of such title is amended—
(A) by striking the item relating to section 654; and

(B) by adding at the end the following new item:

“656. Policy of nondiscrimination based on sexual orientation in the armed forces.”.

(b) CONFORMING AMENDMENTS.—Title 10, United States Code, is amended as follows:

(1) Section 481 is amended—

(A) In subsection (a)(2), by inserting “, including sexual orientation discrimination,” after “discrimination” in subparagraphs (C) and (D); and

(B) in subsection (c), by inserting “and sexual orientation-based” after “gender-based” both places it appears.

(2) Section 983(a)(1) is amended by striking “(in accordance with section 654 of this title and other applicable Federal laws)”.

(3) Section 1034(i)(3) is amended by inserting “sexual orientation,” after “sex,”.

SEC. 5. BENEFITS.

Nothing in this Act, or the amendments made by this Act, shall be construed to require the furnishing of dependent benefits in violation of section 7 of title 1, United States Code (relating to the definitions of “marriage” and
“spouse” and referred to as the “Defense of Marriage Act”).

SEC. 6. NO PRIVATE CAUSE OF ACTION FOR DAMAGES.

Nothing in this Act, or the amendments made by this Act, shall be construed to create a private cause of action for damages.

SEC. 7. REVIEW AND IMPLEMENTATION.

(a) Pentagon Working Group.—

(1) Establishment.—The Secretary of Defense shall establish in the Department of Defense a working group (to be known as the “Pentagon Working Group”) to make recommendations to the Secretary regarding the implementation of this Act and the amendments made by this Act.

(2) Treatment of existing working group.—If there exists in the Department as of the date of the enactment of this Act a working group on recommendations regarding the repeal of section 654 of title 10, United States Code, the Secretary may treat the working group as the working group required by paragraph (1) for purposes of this section.

(b) Working Group Recommendations.—

(1) Submittal to Secretary of Defense.—

Not later than 270 days after the date of the enact-
ment of this Act, the working group under sub-
section (a) shall submit to the Secretary of Defense
a written report setting forth such recommendations
as the working group considers appropriate for a re-
vision of Department of Defense regulations, or the
issuance of new regulations, to implement this Act
and the amendments made by this Act.

(2) Submittal to Congress.—The report
under paragraph (1) shall also be submitted to the
Committees on Armed Services of the Senate and
the House of Representatives.

(c) Regulations.—

(1) Revisions required.—Not later than 60
days after receipt of the report required by sub-
section (b)(1), the Secretary of Defense shall revise
Department of Defense regulations, and shall issue
such new regulations as may be necessary, to imple-
ment this Act and the amendments made by this
Act. The Secretary of Defense shall further direct
the Secretary of each military department to revise
regulations of that military department in accord-
ance with this Act, not later than 120 days after the
Secretary of Defense receives the report required by
subsection (b)(1).
(2) ELEMENTS.—The revisions required by paragraph (1) shall include the following:

(A) Revision of all equal opportunity and human relations regulations, directives, and instructions to add sexual orientation non-discrimination to the Department of Defense Equal Opportunity policy and to related human relations training programs.

(B) Revision of Department of Defense and military department personnel regulations to eliminate procedures for involuntary discharges based on sexual orientation.

(C) Revision of Department of Defense and military department regulations governing victims’ advocacy programs to include sexual orientation discrimination among the forms of discrimination for which members of the Armed Forces and their families may seek assistance.

(D) Revision of any Department of Defense and military department regulations as necessary to ensure that regulations governing the personal conduct of members of the Armed Forces are written and enforced without regard to sexual orientation.
(d) Sexual Orientation Defined.—In this section, the term “sexual orientation” has the meaning given that term in section 656(f) of title 10, United States Code, as added by section 4(a).

SEC. 8. REPORT.

Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth an assessment of the compliance of institutions of higher education with section 983 of title 10, United States Code (as amended by section 4(b)), and describing the actions, if any, taken by the Secretary to effect the denial of funds authorized in that section to an institution of higher education that continues to prohibit, or in effect prevent, the Secretary or a military department from maintaining, establishing, or operating a unit of the Senior Reserve Officers’ Training Corps at that institution (or any subelement of that institution).