To prohibit discrimination on the basis of sex, gender identity, and sexual orientation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 2, 2017

Mr. MERKLEY (for himself, Ms. BALDWIN, Mr. BOOKER, Mr. BENNET, Mr. BLUMENTHAL, Mr. BROWN, Ms. CANTWELL, Mr. CARDIN, Mr. CARPER, Mr. CASEY, Mr. COONS, Ms. CORTEZ MASTO, Ms. DUCKWORTH, Mr. DURBIN, Mrs. FEINSTEIN, Mr. FRANKEN, Mrs. GILLIBRAND, Ms. HARRIS, Ms. HASSAN, Mr. HEINRICH, Ms. HEITKAMP, Ms. HIRONO, Mr. Kaine, Mr. King, Ms. KLOBUCHAR, Mr. LEAHY, Mr. MARKEY, Mrs. McCASKILL, Mr. MENENDEZ, Mr. MURPHY, Mrs. MURRAY, Mr. NELSON, Mr. PETERS, Mr. REED, Mr. SANDERS, Mr. SCHATZ, Mr. SCHUMER, Mrs. SHAHEEN, Ms. STABENOW, Mr. TESTER, Mr. UDALL, Mr. VAN HOLLEN, Mr. WARNER, Ms. WARREN, Mr. WHITEHOUSE, and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To prohibit discrimination on the basis of sex, gender identity, and sexual orientation, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Equality Act”.
SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) Discrimination can occur on the basis of the sex, sexual orientation, gender identity, or pregnancy, childbirth, or a related medical condition of an individual, as well as because of sex-based stereotypes. Each of these factors alone can serve as the basis for discrimination, and each is a form of sex discrimination.

(2) A single instance of discrimination may have more than one basis. For example, discrimination against a married same-sex couple could be based on the sex stereotype that marriage should only be between heterosexual couples, the sexual orientation of the two individuals in the couple, or both. Discrimination against a pregnant lesbian could be based on her sex, her sexual orientation, her pregnancy, or on the basis of multiple factors.

(3) Lesbian, gay, bisexual, and transgender (referred to as “LGBT”) people commonly experience discrimination in securing access to public accommodations—including restaurants, stores, places of or establishments that provide entertainment, and transportation. Forms of discrimination include the exclusion and denial of entry, unequal or unfair treatment, harassment, and violence. This discrimi-
nation prevents the full participation of LGBT people in society and disrupts the free flow of commerce.

(4) Women also face discrimination, in establishments such as stores and restaurants, and places or establishments that provide other goods or services, such as entertainment or transportation, including sexual harassment, differential pricing, and denial of services because they are pregnant or breastfeeding.

(5) Regular and ongoing discrimination against LGBT people, as well as women, in accessing public accommodations contributes to negative social and economic outcomes.

(6) The discredited practice known as “conversion therapy” is a form of discrimination that harms LGBT people by undermining individuals sense of self worth, increasing suicide ideation and substance abuse, exacerbating family conflict, and contributing to second class status.

(7) Both LGBT people and women face widespread discrimination in employment and various services, including by entities that receive Federal financial assistance. Such discrimination—
(A) is particularly troubling and inappropriate for programs and services funded wholly
or in part by the Federal Government;

(B) undermines national progress toward
equal treatment regardless of sex, sexual ori-
entation, or gender identity; and

(C) is inconsistent with the constitutional
principle of equal protection under the Four-
teenth Amendment of the Constitution of the
United States.

(8) Workers who are LGBT, or are perceived to
be LGBT, have been subjected to a history and pat-
tern of persistent, widespread, and pervasive dis-
 crimination on the bases of sexual orientation and
gender identity by private sector employers and Fed-
eral, State, and local government employers.

(9) Numerous provisions of Federal law ex-
pressly prohibit discrimination on the basis of sex,
and Federal agencies and courts have correctly in-
terpreted these prohibitions on sex discrimination to
include discrimination based on sexual orientation,
gender identity, and sex stereotypes. In particular,
the Equal Employment Opportunity Commission
correctly interpreted title VII of the Civil Rights Act

(10) The absence of explicit prohibitions of discrimination on the basis of sexual orientation and gender identity under Federal statutory law, as well as the existence of legislative proposals that would have provided such explicit prohibitions, has led some courts to conclude incorrectly that current Federal laws prohibiting sex discrimination do not prohibit discrimination on the basis of sexual orientation and gender identity. It has also created uncertainty for employers and other entities covered by Federal nondiscrimination laws and caused unnecessary hardships for LGBT individuals.

(11) LGBT people often face discrimination when seeking to rent or purchase housing, as well as in every other aspect of obtaining and maintaining housing. LGBT people in same-sex relationships are often discriminated against when two names associated with one gender appear on a housing application, and transgender people often encounter discrimination when credit checks or inquiries reveal a former name.

(12) National surveys, including a study commissioned by the Department of Housing and Urban
Development, show that housing discrimination against LGBT people is very prevalent. For instance, when same-sex couples inquire about housing that is available for rent, they are less likely to receive positive responses from landlords. According to other studies, transgender people have half the homeownership rate of non-transgender people and about 1 in 5 transgender people experience homelessness.

(13) As a result of the absence of explicit prohibitions against discrimination on the basis of sexual orientation and gender identity, credit applicants who are LGBT, or perceived to be LGBT, have unequal opportunities to establish credit. LGBT people can experience being denied a mortgage, credit card, student loan, or many other types of credit simply because of their sexual orientation or gender identity.

(14) Numerous studies demonstrate that LGBT people, especially transgender people and women, are economically disadvantaged and at a higher risk for poverty compared with other groups of people.

(15) The right to an impartial jury of one’s peers and the reciprocal right to jury service are fundamental to the free and democratic system of
justice in the United States and are based in the Bill of Rights. There is, however, an unfortunate and long-documented history in the United States of attorneys discriminating against LGBT individuals, or those perceived to be LGBT, in jury selection. Failure to bar peremptory challenges based on the actual or perceived sexual orientation or gender identity of an individual not only erodes a fundamental right, duty, and obligation of being a citizen of the United States, but also unfairly creates a second class of citizenship for LGBT victims, witnesses, plaintiffs, and defendants.

(b) PURPOSE.—It is the purpose of this Act to expand as well as clarify, confirm and create greater consistency in the protections against discrimination on the basis of all covered characteristics and to provide guidance and notice to individuals, organizations, corporations, and agencies regarding their obligations under the law.

SEC. 3. PUBLIC ACCOMMODATIONS.

(a) Prohibition on Discrimination or Segregation in Public Accommodations.—Section 201 of the Civil Rights Act of 1964 (42 U.S.C. 2000a) is amended—

(1) in subsection (a), by inserting “sex, sexual orientation, gender identity,” before “or national origin”; and
(2) in subsection (b)—

(A) in paragraph (3), by striking “stadium” and all that follows and inserting “stadium or other place of or establishment that provides exhibition, entertainment, recreation, exercise, amusement, gathering, or display;”;

(B) by redesignating paragraph (4) as paragraph (6); and

(C) by inserting after paragraph (3) the following:

“(4) any establishment that provides a good, service, or program, including a store, shopping center, online retailer or service provider, salon, bank, gas station, food bank, service or care center, shelter, travel agency, or funeral parlor, or establishment that provides health care, accounting, or legal services;

“(5) any train service, bus service, car service, taxi service, airline service, station, depot, or other place of or establishment that provides transportation service; and”.

(b) Prohibition on Discrimination or Segregation Under Law.—Section 202 of such Act (42 U.S.C. 2000a–1) is amended by inserting “sex, sexual orientation, gender identity,” before “or national origin”.
(c) Rule of Construction.—Title II of such Act (42 U.S.C. 2000a et seq.) is amended by adding at the end the following:

“SEC. 208. RULE OF CONSTRUCTION.

“A reference in this title to an establishment—

“(1) shall be construed to include an individual whose operations affect commerce and who is a provider of a good, service, or program; and

“(2) shall not be construed to be limited to a physical facility or place.”.

SEC. 4. DESEGREGATION OF PUBLIC FACILITIES.

Section 301(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000b(a)) is amended by inserting “sex, sexual orientation, gender identity,” before “or national origin”.

SEC. 5. DESEGREGATION OF PUBLIC EDUCATION.

(a) Definitions.—Section 401(b) of the Civil Rights Act of 1964 (42 U.S.C. 2000c(b)) is amended by inserting “, sexual orientation, gender identity,” before “or national origin”.

(b) Civil Actions by the Attorney General.—

Section 407 of such Act (42 U.S.C. 2000c–6) is amended, in subsection (a)(2), by inserting “, sexual orientation, gender identity,” before “or national origin”.

(c) Classification and Assignment.—Section 410 of such Act (42 U.S.C. 2000c–9) is amended by inserting
“, sexual orientation, gender identity,” before “or national origin”.

SEC. 6. FEDERAL FUNDING.

Section 601 of the Civil Rights Act of 1964 (42 U.S.C. 2000d) is amended by inserting “sex, sexual orientation, gender identity,” before “or national origin,”.

SEC. 7. EMPLOYMENT.

(a) RULES OF CONSTRUCTION.—Title VII of the Civil Rights Act of 1964 is amended by inserting after section 701 (42 U.S.C. 2000e) the following:

“SEC. 701A. RULES OF CONSTRUCTION.

“Section 1106 shall apply to this title except that for purposes of that application, a reference in that section to an ‘unlawful practice’ shall be considered to be a reference to an ‘unlawful employment practice’.”.

(b) UNLAWFUL EMPLOYMENT PRACTICES.—Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2) is amended—

(1) in the section header, by striking “SEX,” and inserting “SEX, SEXUAL ORIENTATION, GENDER IDENTITY,”;

(2) except in subsection (e), by striking “sex,” each place it appears and inserting “sex, sexual orientation, gender identity,”;
(3) in subsection (e)(1), by striking “enterprise,” and inserting “enterprise, if, in a situation in which sex is a bona fide occupational qualification, individuals are recognized as qualified in accordance with their gender identity.”; and

(4) in subsection (h), by striking “sex” the second place it appears and inserting “sex, sexual orientation, gender identity.”.

(e) Other Unlawful Employment Practices.—

Section 704(b) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–3(b)) is amended—

(1) by striking “sex,” the first place it appears and inserting “sex, sexual orientation, gender identity.”; and

(2) by striking “employment.” and inserting “employment, if, in a situation in which sex is a bona fide occupational qualification, individuals are recognized as qualified in accordance with their gender identity.”.

(d) Claims.—Section 706(g)(2)(A) of the Civil Rights Act of 1964 (2000e–5(g)(2)(A)) is amended by striking “sex,” and inserting “sex, sexual orientation, gender identity.”.
(c) Employment by Federal Government.—Section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16) is amended—

(1) in subsection (a), by striking “sex,” and inserting “sex, sexual orientation, gender identity,”;

and

(2) in subsection (c), by striking “sex” and inserting “sex, sexual orientation, gender identity,”.


(1) in section 301(b), by striking “sex,” and inserting “sex, sexual orientation, gender identity,”;

(2) in section 302(a)(1), by striking “sex,” and inserting “sex, sexual orientation, gender identity,”;

and

(3) by adding at the end the following:

“SEC. 305. RULES OF CONSTRUCTION AND CLAIMS.

“Sections 1101(b), 1106, and 1107 of the Civil Rights Act of 1964 shall apply to this title except that for purposes of that application, a reference in that section 1106 to ‘race, color, religion, sex, sexual orientation, gender identity, or national origin’ shall be considered to be a reference to ‘race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability’.”.
(g) **CONGRESSIONAL ACCOUNTABILITY ACT OF 1995.**—The Congressional Accountability Act of 1995 (2 U.S.C. 1301 et seq.) is amended—

(1) in section 201(a)(1) (2 U.S.C. 1311(a)(1)) by inserting “sexual orientation, gender identity,” before “or national origin,”; and

(2) by adding at the end of title II (42 U.S.C. 1311 et seq.) the following:

```
"SEC. 208. RULES OF CONSTRUCTION AND CLAIMS.

"Sections 1101(b), 1106, and 1107 of the Civil Rights Act of 1964 shall apply to section 201 (and remedial provisions of this Act related to section 201) except that for purposes of that application, a reference in that section 1106 to ‘race, color, religion, sex, sexual orientation, gender identity, or national origin’ shall be considered to be a reference to ‘race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability’.”.
```

(h) **CIVIL SERVICE REFORM ACT OF 1978.**—Chapter 23 of title 5, United States Code, is amended—

(1) in section 2301(b)(2), by striking “sex,” and inserting “sex, sexual orientation, gender identity,”;

(2) in section 2302—
(A) in subsection (b)(1)(A), by inserting “sexual orientation, gender identity,” before “or national origin;”; and

(B) in subsection (d)(1), by inserting “sexual orientation, gender identity,” before “or national origin;”; and

(3) by adding at the end the following:

SEC. 2307. RULES OF CONSTRUCTION AND CLAIMS.

“Sections 1101(b), 1106, and 1107 of the Civil Rights Act of 1964 shall apply to this chapter (and remedial provisions of this title related to this chapter) except that for purposes of that application, a reference in that section 1106 to ‘race, color, religion, sex, sexual orientation, gender identity, or national origin’ shall be considered to be a reference to ‘race, color, religion, sex, sexual orientation, gender identity, national origin, age, a handicapping condition, marital status, or political affiliation’.”

SEC. 8. INTERVENTION.

Section 902 of the Civil Rights Act of 1964 (42 U.S.C. 2000h–2) is amended by inserting “, sexual orientation, gender identity,” before “or national origin,”.

SEC. 9. MISCELLANEOUS.

Title XI of the Civil Rights Act of 1964 is amended—

(1) by redesignating sections 1101 through 1104 (42 U.S.C. 2000h et seq.) and sections 1105
and 1106 (42 U.S.C. 2000h–5, 2000h–6) as sections 1102 through 1105 and sections 1108 and 1109, respectively;

(2) by inserting after the title heading the following:

```
SEC. 1101. DEFINITIONS AND RULES.

(a) DEFINITIONS.—In titles II, III, IV, VI, VII, and IX (referred to individually in sections 1106 and 1107 as a ‘covered title’):

(1) RACE; COLOR; RELIGION; SEX; SEXUAL ORIENTATION; GENDER IDENTITY; NATIONAL ORIGIN.—The term ‘race’, ‘color’, ‘religion’, ‘sex’, ‘sexual orientation’, ‘gender identity’, or ‘national origin’, used with respect to an individual, includes—

(A) the race, color, religion, sex, sexual orientation, gender identity, or national origin, respectively, of another person with whom the individual is associated or has been associated; and

(B) a perception or belief, even if inaccurate, concerning the race, color, religion, sex, sexual orientation, gender identity, or national origin, respectively, of the individual.

(2) GENDER IDENTITY.—The term ‘gender identity’ means the gender-related identity, appear-
ance, mannerisms, or other gender-related characteristics of an individual, regardless of the individual’s designated sex at birth.

“(3) INCLUDING.—The term ‘including’ means including, but not limited to, consistent with the term’s standard meaning in Federal law.

“(4) SEX.—The term ‘sex’ includes—

“(A) a sex stereotype;

“(B) pregnancy, childbirth, or a related medical condition; and

“(C) sexual orientation or gender identity.

“(5) SEXUAL ORIENTATION.—The term ‘sexual orientation’ means homosexuality, heterosexuality, or bisexuality.

“(b) RULES.—In a covered title referred to in subsection (a)—

“(1) (with respect to sex) pregnancy, childbirth, or a related medical condition shall not receive less favorable treatment than other physical conditions; and

“(2) (with respect to gender identity) an individual shall not be denied access to a shared facility, including a restroom, a locker room, and a dressing room, that is in accordance with the individual’s gender identity.”; and
(3) by inserting after section 1105 the following:

"SEC. 1106. RULES OF CONSTRUCTION.

“(a) SEX.—Nothing in section 1101 or the provisions of a covered title incorporating a term defined or a rule specified in that section shall be construed—

“(1) to limit the protection against an unlawful practice on the basis of pregnancy, childbirth, or a related medical condition provided by section 701(k); or

“(2) to limit the protection against an unlawful practice on the basis of sex available under any provision of Federal law other than that covered title, prohibiting a practice on the basis of sex.

“(b) CLAIMS AND REMEDIES NOT PRECLUDED.—Nothing in section 1101 or a covered title shall be construed to limit the claims or remedies available to any individual for an unlawful practice on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin including claims brought pursuant to section 1979 or 1980 of the Revised Statutes (42 U.S.C. 1983, 1985) or any other law, including a Federal law amended by the Equality Act, regulation, or policy.

“(c) NO NEGATIVE INFERENCE.—Nothing in section 1101 or a covered title shall be construed to support any
inference that any Federal law prohibiting a practice on
the basis of sex does not prohibit discrimination on the
basis of pregnancy, childbirth, or a related medical condi-
tion, sexual orientation, gender identity, or a sex stereo-
type.

"SEC. 1107. CLAIMS.

"The Religious Freedom Restoration Act of 1993 (42
U.S.C. 2000bb et seq.) shall not provide a claim con-
cerning, or a defense to a claim under, a covered title,
or provide a basis for challenging the application or en-
forcement of a covered title."

SEC. 10. HOUSING.

(a) FAIR HOUSING ACT.—The Fair Housing Act (42
U.S.C. 3601 et seq.) is amended—

(1) in section 802, by adding at the end the fol-
lowing:

“(p) ‘Gender identity’, ‘sex’, and ‘sexual orientation’
have the meanings given those terms in section 1101(a)
of the Civil Rights Act of 1964.

tion’, ‘gender identity’, ‘handicap’, ‘familial status’, or ‘na-
tional origin’, used with respect to an individual, in-
cludes—

“(1) the race, color, religion, sex, sexual ori-

or national origin, respectively, of another person with whom the individual is associated or has been associated; and

“(2) a perception or belief, even if inaccurate, concerning the race, color, religion, sex, sexual orientation, gender identity, handicap, familial status, or national origin, respectively, of the individual.”;

(2) in section 804, by inserting “sexual orientation, gender identity,” after “sex,” each place that term appears;

(3) in section 805, by inserting “sexual orientation, gender identity,” after “sex,” each place that term appears;

(4) in section 806, by inserting “sexual orientation, gender identity,” after “sex,”;

(5) in section 808(e)(6), by inserting “sexual orientation, gender identity,” after “sex,”; and

(6) by adding at the end the following:

“SEC. 821. RULES OF CONSTRUCTION.

“Sections 1101(b) and 1106 of the Civil Rights Act of 1964 shall apply to this title and section 901, except that for purposes of that application, a reference in that section 1101(b) or 1106 to a ‘covered title’ shall be considered a reference to ‘this title and section 901’. 
“SEC. 822. CLAIMS.

“Section 1107 of the Civil Rights Act of 1964 shall apply to this title and section 901, except that for purposes of that application, a reference in that section 1107 to a ‘covered title’ shall be considered a reference to ‘this title and section 901’.”.

(b) PREVENTION OF INTIMIDATION IN FAIR HOUSING CASES.—Section 901 of the Civil Rights Act of 1968 (42 U.S.C. 3631) is amended by inserting “sexual orientation (as such term is defined in section 802 of this Act), gender identity (as such term is defined in section 802 of this Act),” after “sex,” each place that term appears.

SEC. 11. EQUAL CREDIT OPPORTUNITY.

(a) PROHIBITED DISCRIMINATION.—Section 701(a)(1) of the Equal Credit Opportunity Act (15 U.S.C. 1691(a)(1)) is amended by inserting “sexual orientation, gender identity,” after “status,.”.

(b) DEFINITIONS.—Section 702 of the Equal Credit Opportunity Act (15 U.S.C. 1691a) is amended—

(1) by redesignating subsections (f) and (g) as subsections (h) and (i), respectively;

(2) by inserting after subsection (e) the following:

“(f) The terms ‘gender identity’, ‘sex’, and ‘sexual orientation’ have the meanings given those terms in section 1101(a) of the Civil Rights Act of 1964.

“(1) the race, color, religion, national origin, sex, sexual orientation, gender identity, marital status, or age, respectively, of another person with whom the individual is associated or has been associated; and

“(2) a perception or belief, even if inaccurate, concerning the race, color, religion, national origin, sex, sexual orientation, gender identity, marital status, or age, respectively, of the individual.”; and

(3) by adding at the end the following:

“(j) Sections 1101(b) and 1106 of the Civil Rights Act of 1964 shall apply to this title, except that for purposes of that application—

“(1) a reference in those sections to a ‘covered title’ shall be considered a reference to ‘this title’; and

“(2) paragraph (1) of such section 1101(b) shall apply with respect to all aspects of a credit transaction.”.

(c) RELATION TO STATE LAWS.—Section 705(a) of the Equal Credit Opportunity Act (15 U.S.C. 1691d(a))
is amended by inserting “, sexual orientation, gender identity,” after “sex”.

(d) CIVIL LIABILITY.—Section 706 of the Equal Credit Opportunity Act (15 U.S.C. 1691e) is amended by adding at the end the following:

“(l) Section 1107 of the Civil Rights Act of 1964 shall apply to this title, except that for purposes of that application, a reference in that section to a ‘covered title’ shall be considered a reference to ‘this title’.”.

SEC. 12. JURIES.

(a) IN GENERAL.—Chapter 121 of title 28, United States Code, is amended—

(1) in section 1862, by inserting “sexual orientation, gender identity,” after “sex,”;

(2) in section 1867(e), in the second sentence, by inserting “sexual orientation, gender identity,” after “sex,”;

(3) in section 1869—

(A) in subsection (j), by striking “and” at the end;

(B) in subsection (k), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:
“(l) ‘gender identity’, ‘sex’, and ‘sexual orientation’ have the meanings given such terms under section 1101(a) of the Civil Rights Act of 1964; and


“(1) the race, color, religion, sex, sexual orientation, gender identity, economic status, or national origin, respectively, of another person with whom the individual is associated or has been associated; and

“(2) a perception or belief, even if inaccurate, concerning the race, color, religion, sex, sexual orientation, gender identity, economic status, or national origin, respectively, of the individual.”; and

(4) by adding at the end the following:

“§ 1879. Rules of construction and claims

“Sections 1101(b), 1106, and 1107 of the Civil Rights Act of 1964 shall apply to this chapter, except that for purposes of that application, a reference in those sections to a ‘covered title’ shall be considered a reference to ‘this chapter’.”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—

The table of sections for chapter 121 of title 28, United
States Code, is amended by adding at the end the fol-
lowing:

“1879. Rules of construction and claims.”.