

105TH CONGRESS  
1ST SESSION

# H. R. 1858

To prohibit employment discrimination on the basis of sexual orientation.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 10, 1997

Mr. SHAYS (for himself, Mr. FRANK of Massachusetts, Mr. ABERCROMBIE, Mr. ACKERMAN, Mr. ALLEN, Mr. ANDREWS, Mr. BALDACCI, Mr. BARRETT of Wisconsin, Mr. BECERRA, Mr. BERMAN, Mr. BLAGOJEVICH, Mr. BLUMENAUER, Mr. BOEHLERT, Mr. BONIOR, Mr. BROWN of California, Mr. BROWN of Ohio, Mr. CAMPBELL, Mr. CAPPS, Mr. CARDIN, Ms. CARSON, Ms. CHRISTIAN-GREEN, Mr. CLAY, Mrs. CLAYTON, Mr. CLYBURN, Mr. CONYERS, Mr. COYNE, Mr. CUMMINGS, Mr. DAVIS of Illinois, Mr. DEFazio, Ms. DEGETTE, Mr. DELAHUNT, Ms. DELAURO, Mr. DELLUMS, Mr. DEUTSCH, Mr. DICKS, Mr. DIXON, Mr. ENGEL, Ms. ESHOO, Mr. EVANS, Mr. FALOMAVAEGA, Mr. FARR of California, Mr. FATTAH, Mr. FAZIO of California, Mr. FILNER, Mr. FLAKE, Mr. FOGLIETTA, Mr. FORD, Mr. FRELINGHUYSEN, Mr. FROST, Ms. FURSE, Mr. GEJDENSON, Mr. GEPHARDT, Mr. GILMAN, Mr. GONZALEZ, Mr. GREENWOOD, Mr. GUTIERREZ, Ms. HARMAN, Mr. HASTINGS of Florida, Mr. HINCHEY, Ms. HOOLEY of Oregon, Mr. HORN, Mr. HOYER, Ms. JACKSON-LEE of Texas, Mr. JACKSON of Illinois, Mr. JEFFERSON, Ms. EDDIE BERNICE JOHNSON of Texas, Mrs. JOHNSON of Connecticut, Mrs. KELLY, Mr. KENNEDY of Massachusetts, Mr. KENNEDY of Rhode Island, Mrs. KENNELLY of Connecticut, Mr. KILDEE, Ms. KILPATRICK, Mr. KIND, Mr. KOLBE, Mr. KUCINICH, Mr. LANTOS, Mr. LEACH, Mr. LEVIN, Mr. LEWIS of Georgia, Ms. LOFGREN, Mrs. LOWEY, Mr. LUTHER, Mrs. MALONEY of New York, Mr. MALONEY of Connecticut, Mr. MARKEY, Mr. MARTINEZ, Mr. MATSUI, Mrs. MCCARTHY of New York, Ms. MCCARTHY of Missouri, Mr. MCDERMOTT, Mr. MCGOVERN, Mr. MCHALE, Ms. MCKINNEY, Mr. MEEHAN, Mrs. MEEK of Florida, Mr. MENENDEZ, Ms. MILLENDER-MCDONALD, Mr. MILLER of California, Mrs. MINK of Hawaii, Mr. MOAKLEY, Mr. MORAN of Virginia, Mrs. MORELLA, Mr. NADLER, Mr. NEAL of Massachusetts, Ms. NORTON, Mr. OLVER, Mr. OWENS, Mr. PALLONE, Mr. PASCRELL, Mr. PASTOR, Mr. PAYNE, Ms. PELOSI, Mr. RANGEL, Mr. REYES, Ms. RIVERS, Mr. ROTHMAN, Ms. ROYBAL-ALLARD, Mr. RUSH, Mr. SABO, Ms. SANCHEZ, Mr. SANDERS, Mr. SAWYER, Mr. SCHUMER, Mr. SERRANO, Mr. SHERMAN, Mr. SKAGGS, Ms. SLAUGHTER, Mr. ADAM SMITH of Washington, Ms. STABENOW, Mr. STARK, Mr. STOKES, Mrs. TAUSCHER, Mr. THOMPSON, Mr. TIERNEY,

Mr. TORRES, Mr. TOWNS, Mr. TRAFICANT, Mr. UNDERWOOD, Ms. VELÁZQUEZ, Mr. VENTO, Ms. WATERS, Mr. WATT of North Carolina, Mr. WAXMAN, Mr. WEXLER, Mr. WEYGAND, Ms. WOOLSEY, Mr. WYNN, and Mr. YATES) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committees on House Oversight, Government Reform and Oversight, and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## 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-Dis-  
 5       crimination Act of 1997”.

6       **SEC. 2. PURPOSES.**

7       The purposes of this Act are—

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

11              (2) to provide meaningful and effective rem-  
 12      edies for employment discrimination on the basis of  
 13      sexual orientation; and

14              (3) to invoke congressional powers, including  
 15      the powers to enforce the 14th amendment to the  
 16      Constitution and to regulate interstate commerce, in

1       order to prohibit employment discrimination on the  
2       basis of sexual orientation.

3   **SEC. 3. DEFINITIONS.**

4       In this Act:

5           (1) COMMISSION.—The term “Commission”  
6       means the Equal Employment Opportunity Commis-  
7       sion.

8           (2) COVERED ENTITY.—The term “covered en-  
9       tity” means an employer, employment agency, labor  
10      organization, joint labor-management committee, an  
11      entity to which section 717(a) of the Civil Rights  
12      Act of 1964 (42 U.S.C. 2000e–16(a)) applies, an  
13      employing authority to which section 302(a)(1) of  
14      the Government Employee Rights Act of 1991 (2  
15      U.S.C. 1202(a)(1)) applies, or an employing office,  
16      as defined in section 101 of the Congressional Ac-  
17      countability Act of 1995 (2 U.S.C. 1301). The term  
18      “covered entity” includes an employing office, as de-  
19      fined in section 401 of title 3, United States Code.

20          (3) EMPLOYER.—The term “employer” means  
21      a person engaged in an industry affecting commerce  
22      (as defined in section 701(h) of the Civil Rights Act  
23      of 1964 (42 U.S.C. 2000e(h))) who has 15 or more  
24      employees (as defined in section 701(f) of such Act  
25      (42 U.S.C. 2000e(f)) for each working day in each

1 of 20 or more calendar weeks in the current or pre-  
2 ceding calendar year, and any agent of such a per-  
3 son, but such term does not include a bona fide pri-  
4 vate membership club (other than a labor organiza-  
5 tion) that is exempt from taxation under section  
6 501(c) of the Internal Revenue Code of 1986.

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

11 (5) EMPLOYMENT OR AN EMPLOYMENT OPPOR-  
12 TUNITY.—Except as provided in section 10(a)(1),  
13 the term “employment or an employment oppor-  
14 tunity” includes job application procedures, hiring,  
15 advancement, discharge, compensation, job training,  
16 or any other term, condition, or privilege of employ-  
17 ment, but does not include the service of a volunteer  
18 for which the volunteer receives no compensation.

19 (6) LABOR ORGANIZATION.—The term “labor  
20 organization” has the meaning given the term in  
21 section 701(d) of the Civil Rights Act of 1964 (42  
22 U.S.C. 2000e(d)).

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

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

3                   (A) a religious corporation, association, or  
4       society; or

5                   (B) a school, college, university, or other  
6       educational institution or institution of learn-  
7       ing, if—

8                           (i) the institution is in whole or sub-  
9                           stantial part controlled, managed, owned,  
10                          or supported by a religion, religious cor-  
11                          poration, association, or society; or

12                           (ii) the curriculum of the institution is  
13                          directed toward the propagation of a reli-  
14                          gion.

15           (9) SEXUAL ORIENTATION.—The term “sexual  
16       orientation” means homosexuality, bisexuality, or  
17       heterosexuality, whether the orientation is real or  
18       perceived.

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

22   **SEC. 4. DISCRIMINATION PROHIBITED.**

23       A covered entity shall not, with respect to the employ-  
24       ment or an employment opportunity of an individual—

1           (1) subject the individual to a different stand-  
2           ard or different treatment, or otherwise discriminate  
3           against the individual, on the basis of sexual orienta-  
4           tion; or

5           (2) discriminate against the individual based on  
6           the sexual orientation of a person with whom the in-  
7           dividual is believed to associate or to have associ-  
8           ated.

9   **SEC. 5. RETALIATION AND COERCION PROHIBITED.**

10       (a) RETALIATION.—A covered entity shall not dis-  
11       criminate against an individual because the individual op-  
12       posed any act or practice prohibited by this Act or because  
13       the individual made a charge, assisted, testified, or partici-  
14       pated in any manner in an investigation, proceeding, or  
15       hearing under this Act.

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

22   **SEC. 6. BENEFITS.**

23       This Act does not apply to the provision of employee  
24       benefits to an individual for the benefit of the partner of  
25       the individual.

1 **SEC. 7. NO DISPARATE IMPACT; COLLECTION OF**  
2 **STATISTICS.**

3 (a) DISPARATE IMPACT.—The fact that an employ-  
4 ment practice has a disparate impact, as the term “dispar-  
5 ate impact” is used in section 703(k) of the Civil Rights  
6 Act of 1964 (42 U.S.C. 2000e–2(k)), on the basis of sex-  
7 ual orientation does not establish a prima facie violation  
8 of this Act.

9 (b) COLLECTION OF STATISTICS.—The Commission  
10 shall not collect statistics on sexual orientation from cov-  
11 ered entities, or compel the collection of such statistics by  
12 covered entities.

13 **SEC. 8. QUOTAS AND PREFERENTIAL TREATMENT PROHIB-**  
14 **ITED.**

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) CONSENT DECREES.—The Commission may not  
21 enter into a consent decree that includes a quota, or pref-  
22 erential treatment to an individual, based on sexual ori-  
23 entation.

24 **SEC. 9. RELIGIOUS EXEMPTION.**

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

1       (b) UNRELATED BUSINESS TAXABLE INCOME.—This  
 2 Act shall apply to employment or an employment oppor-  
 3 tunity for an employment position of a covered entity that  
 4 is a religious organization, if the duties of the position per-  
 5 tain solely to activities of the organization that generate  
 6 unrelated business taxable income subject to taxation  
 7 under section 511(a) of the Internal Revenue Code of  
 8 1986.

9       **SEC. 10. NONAPPLICATION TO MEMBERS OF THE ARMED**  
 10                               **FORCES; VETERANS' PREFERENCES.**

11       (a) ARMED FORCES.—

12               (1) EMPLOYMENT OR AN EMPLOYMENT OPPOR-  
 13 TUNITY.—In this Act, the term “employment or an  
 14 employment opportunity” does not apply to the rela-  
 15 tionship between the United States and members of  
 16 the Armed Forces.

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

20       (b) VETERANS' PREFERENCES.—This Act does not  
 21 repeal or modify any Federal, State, territorial, or local  
 22 law creating a special right or preference concerning em-  
 23 ployment or an employment opportunity for a veteran.

1 **SEC. 11. CONSTRUCTION.**

2       Nothing in this Act shall be construed to prohibit a  
3 covered entity from enforcing rules regarding nonprivate  
4 sexual conduct, if the rules of conduct are designed for,  
5 and uniformly applied to, all individuals regardless of sex-  
6 ual orientation.

7 **SEC. 12. ENFORCEMENT.**

8       (a) **ENFORCEMENT POWERS.**—With respect to the  
9 administration and enforcement of this Act in the case of  
10 a claim alleged by an individual for a violation of this  
11 Act—

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

14                       (A) title VII of the Civil Rights Act of  
15 1964 (42 U.S.C. 2000e et seq.); or

16                       (B) sections 302 and 304 of the Govern-  
17 ment Employee Rights Act of 1991 (2 U.S.C.  
18 1202 and 1220);

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

22               (2) the Librarian of Congress shall have the  
23 same powers as the Librarian of Congress has to ad-  
24 minister and enforce title VII of the Civil Rights Act  
25 of 1964 (42 U.S.C. 2000e et seq.) in the case of a

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

3 (3) the Board (as defined in section 101 of the  
4 Congressional Accountability Act of 1995 (2 U.S.C.  
5 1301)) shall have the same powers as the Board has  
6 to administer and enforce the Congressional Ac-  
7 countability Act of 1995 (2 U.S.C. 1301 et seq.) in  
8 the case of a claim alleged by the individual for a  
9 violation of section 201(a)(1) of such Act (2 U.S.C.  
10 1311(a)(1));

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

14 (A) title VII of the Civil Rights Act of  
15 1964 (42 U.S.C. 2000e et seq.); or

16 (B) sections 302 and 304 of the Govern-  
17 ment Employee Rights Act of 1991 (2 U.S.C.  
18 1202 and 1220);

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

22 (5) the President, the Commission, and the  
23 Merit Systems Protection Board shall have the same  
24 powers as the President, the Commission, and the  
25 Board, respectively, have to administer and enforce

1 chapter 5 of title 3, United States Code, in the case  
2 of a claim alleged by the individual for a violation  
3 of section 411 of such title;

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

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

11 (B) sections 302 and 304 of the Govern-  
12 ment Employee Rights Act of 1991 (2 U.S.C.  
13 1202 and 1220) in the case of a claim alleged  
14 by the individual for a violation of section  
15 302(a)(1) of such Act (2 U.S.C. 1202(a)(1));

16 (C) the Congressional Accountability Act  
17 of 1995 (2 U.S.C. 1301 et seq.) in the case of  
18 a claim alleged by the individual for a violation  
19 of section 201(a)(1) of such Act (2 U.S.C.  
20 1311(a)(1)); and

21 (D) chapter 5 of title 3, United States  
22 Code, in the case of a claim alleged by the indi-  
23 vidual for a violation of section 411 of such  
24 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 Act 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 the individual for a violation of such  
8 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 the 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 the 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 the individual  
22 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 Act, 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 **SEC. 13. STATE AND FEDERAL IMMUNITY.**

8 (a) STATE IMMUNITY.—A State shall not be immune  
9 under the 11th amendment to the Constitution from an  
10 action in a Federal court of competent jurisdiction for a  
11 violation of this Act.

12 (b) REMEDIES AGAINST THE UNITED STATES AND  
13 THE STATES.—Notwithstanding any other provision of  
14 this Act, in an action or administrative proceeding against  
15 the United States or a State for a violation of this Act,  
16 remedies (including remedies at law and in equity, and  
17 interest) are available for the violation to the same extent  
18 as the remedies are available for a violation of title VII  
19 of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.)  
20 by a private entity, except that—

- 21 (1) punitive damages are not available; and  
22 (2) compensatory damages are available to the  
23 extent specified in section 1977A(b) of the Revised  
24 Statutes (42 U.S.C. 1981a(b)).

1 **SEC. 14. ATTORNEYS' FEES.**

2       Notwithstanding any other provision of this Act, in  
3 an action or administrative proceeding for a violation of  
4 this Act, an entity described in section 12(a) (other than  
5 paragraph (4) of such section), in the discretion of the  
6 entity, may allow the prevailing party, other than the  
7 United States, a reasonable attorney's fee (including ex-  
8 pert fees) as part of the costs. The United States shall  
9 be liable for the costs to the same extent as a private per-  
10 son.

11 **SEC. 15. POSTING NOTICES.**

12       A covered entity shall post notices for employees, ap-  
13 plicants for employment, and members, to whom the provi-  
14 sions specified in section 12(b) apply, that describe the  
15 applicable provisions of this Act in the manner prescribed  
16 by, and subject to the penalty provided under, section 711  
17 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–10).

18 **SEC. 16. REGULATIONS.**

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

22       (b) LIBRARIAN OF CONGRESS.—The Librarian of  
23 Congress shall have authority to issue regulations to carry  
24 out this Act with respect to employees of the Library of  
25 Congress.

1 (c) BOARD.—The Board referred to in section  
2 12(a)(3) shall have authority to issue regulations to carry  
3 out this Act, in accordance with section 304 of the Con-  
4 gressional Accountability Act of 1995 (2 U.S.C. 1384),  
5 with respect to covered employees, as defined in section  
6 101 of such Act (2 U.S.C. 1301).

7 (d) PRESIDENT.—The President shall have authority  
8 to issue regulations to carry out this Act with respect to  
9 covered employees, as defined in section 401 of title 3,  
10 United States Code.

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

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

16 **SEC. 18. SEVERABILITY.**

17 If any provision of this Act, or the application of the  
18 provision to any person or circumstance, is held to be in-  
19 valid, the remainder of this Act and the application of the  
20 provision to any other person or circumstance shall not  
21 be affected by the invalidity.

22 **SEC. 19. EFFECTIVE DATE.**

23 (a) IN GENERAL.—Except as provided in subsection  
24 (b), this Act shall take effect 60 days after the date of

1 enactment of this Act and shall not apply to conduct oc-  
2 ccurring before the effective date.

3 (b) PRESIDENTIAL OFFICES.—The second sentence  
4 of section 3(2), and sections 12(a)(5), 12(a)(6)(D),  
5 12(b)(4), and 16(d), shall take effect on, and shall not  
6 apply to conduct occurring before, the later of—

7 (1) October 1, 1997; and

8 (2) the effective date described in subsection

9 (a).

○