

105TH CONGRESS  
1ST SESSION

# S. 869

To prohibit employment discrimination on the basis of sexual orientation.

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## IN THE SENATE OF THE UNITED STATES

JUNE 10, 1997

Mr. JEFFORDS (for himself, Mr. KENNEDY, Mr. LIEBERMAN, Mr. TORRICELLI, Mr. WYDEN, Mr. BINGAMAN, Mr. KERRY, Mr. WELLSTONE, Mr. HARKIN, Ms. LANDRIEU, Mr. FEINGOLD, Mrs. MURRAY, Mrs. BOXER, Mr. LEVIN, Mr. SARBANES, Mr. AKAKA, Mr. LAUTENBERG, Mr. DURBIN, Mr. CHAFEE, Mr. KOHL, Mr. INOUE, Ms. MIKULSKI, Mr. ROBB, Mr. MOYNIHAN, Mrs. FEINSTEIN, Mr. DODD, Mr. REID, Mr. LEAHY, Mr. BRYAN, Ms. MOSELEY-BRAUN, Mr. GLENN, Mr. KERREY, Mr. REED, Mr. D'AMATO, and Mr. CLELAND) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

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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—

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 interstate commerce, in  
10          order to prohibit employment discrimination on the  
11          basis of sexual orientation.

12 **SEC. 3. DEFINITIONS.**

13       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 office,  
25           as defined in section 101 of the Congressional Ac-

1       countability Act of 1995 (2 U.S.C. 1301). The term  
2       “covered entity” includes an employing office, as de-  
3       fined in section 401 of title 3, United States Code.

4           (3) EMPLOYER.—The term “employer” means  
5       a person engaged in an industry affecting commerce  
6       (as defined in section 701(h) of the Civil Rights Act  
7       of 1964 (42 U.S.C. 2000e(h))) who has 15 or more  
8       employees (as defined in section 701(f) of such Act  
9       (42 U.S.C. 2000e(f)) for each working day in each  
10      of 20 or more calendar weeks in the current or pre-  
11      ceding calendar year, and any agent of such a per-  
12      son, but such term does not include a bona fide pri-  
13      vate membership club (other than a labor organiza-  
14      tion) that is exempt from taxation under section  
15      501(c) of the Internal Revenue Code of 1986.

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

20          (5) EMPLOYMENT OR AN EMPLOYMENT OPPOR-  
21      TUNITY.—Except as provided in section 10(a)(1),  
22      the term “employment or an employment oppor-  
23      tunity” includes job application procedures, hiring,  
24      advancement, discharge, compensation, job training,  
25      or any other term, condition, or privilege of employ-

1       ment, but does not include the service of a volunteer  
2       for which the volunteer receives no compensation.

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

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

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

12               (A) a religious corporation, association, or  
13       society; or

14               (B) a school, college, university, or other  
15       educational institution or institution of learn-  
16       ing, if—

17                   (i) the institution is in whole or sub-  
18       stantial part controlled, managed, owned,  
19       or supported by a religion, religious cor-  
20       poration, association, or society; or

21                   (ii) the curriculum of the institution is  
22       directed toward the propagation of a reli-  
23       gion.

24          (9) SEXUAL ORIENTATION.—The term “sexual  
25       orientation” means homosexuality, bisexuality, or

1       heterosexuality, whether the orientation is real or  
2       perceived.

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

6   **SEC. 4. DISCRIMINATION PROHIBITED.**

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

9               (1) subject the individual to a different stand-  
10       ard or different treatment, or otherwise discriminate  
11       against the individual, on the basis of sexual orienta-  
12       tion; or

13              (2) discriminate against the individual based on  
14       the sexual orientation of a person with whom the in-  
15       dividual is believed to associate or to have associ-  
16       ated.

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

18       (a) RETALIATION.—A covered entity shall not dis-  
19       criminate against an individual because the individual op-  
20       posed any act or practice prohibited by this Act or because  
21       the individual made a charge, assisted, testified, or partici-  
22       pated in any manner in an investigation, proceeding, or  
23       hearing under this Act.

24       (b) COERCION.—A person shall not coerce, intimi-  
25       date, threaten, or interfere with any individual in the exer-

1 cise or enjoyment of, or on account of the individual's hav-  
 2 ing exercised, enjoyed, assisted in, or encouraged the exer-  
 3 cise or enjoyment of, any right granted or protected by  
 4 this Act.

5 **SEC. 6. BENEFITS.**

6 This Act does not apply to the provision of employee  
 7 benefits to an individual for the benefit of the partner of  
 8 the individual.

9 **SEC. 7. NO DISPARATE IMPACT; COLLECTION OF STATIS-**  
 10 **TICS.**

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

17 (b) COLLECTION OF STATISTICS.—The Commission  
 18 shall not collect statistics on sexual orientation from cov-  
 19 ered entities, or compel the collection of such statistics by  
 20 covered entities.

21 **SEC. 8. QUOTAS AND PREFERENTIAL TREATMENT PROHIB-**  
 22 **ITED.**

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

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

4 (c) CONSENT DECREES.—The Commission may not  
 5 enter into a consent decree that includes a quota, or pref-  
 6 erential treatment to an individual, based on sexual ori-  
 7 entation.

8 **SEC. 9. RELIGIOUS EXEMPTION.**

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

11 (b) UNRELATED BUSINESS TAXABLE INCOME.—This  
 12 Act shall apply to employment or an employment oppor-  
 13 tunity for an employment position of a covered entity that  
 14 is a religious organization, if the duties of the position per-  
 15 tain solely to activities of the organization that generate  
 16 unrelated business taxable income subject to taxation  
 17 under section 511(a) of the Internal Revenue Code of  
 18 1986.

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

21 (a) ARMED FORCES.—

22 (1) EMPLOYMENT OR AN EMPLOYMENT OPPOR-  
 23 TUNITY.—In this Act, the term “employment or an  
 24 employment opportunity” does not apply to the rela-

1        tionship between the United States and members of  
2        the Armed Forces.

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

6            (b) VETERANS’ PREFERENCES.—This Act does not  
7        repeal or modify any Federal, State, territorial, or local  
8        law creating a special right or preference concerning em-  
9        ployment or an employment opportunity for a veteran.

10    **SEC. 11. CONSTRUCTION.**

11        Nothing in this Act shall be construed to prohibit a  
12        covered entity from enforcing rules regarding nonprivate  
13        sexual conduct, if the rules of conduct are designed for,  
14        and uniformly applied to, all individuals regardless of sex-  
15        ual orientation.

16    **SEC. 12. ENFORCEMENT.**

17            (a) ENFORCEMENT POWERS.—With respect to the  
18        administration and enforcement of this Act in the case of  
19        a claim alleged by an individual for a violation of this  
20        Act—

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

23            (A) title VII of the Civil Rights Act of  
24        1964 (42 U.S.C. 2000e et seq.); or



1 (B) sections 302 and 304 of the Govern-  
2 ment Employee Rights Act of 1991 (2 U.S.C.  
3 1202 and 1220);

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

7 (2) the Librarian of Congress shall have the  
8 same powers as the Librarian of Congress has to ad-  
9 minister and enforce title VII of the Civil Rights Act  
10 of 1964 (42 U.S.C. 2000e et seq.) in the case of a  
11 claim alleged by the individual for a violation of such  
12 title;

13 (3) the Board (as defined in section 101 of the  
14 Congressional Accountability Act of 1995 (2 U.S.C.  
15 1301)) shall have the same powers as the Board has  
16 to administer and enforce the Congressional Ac-  
17 countability Act of 1995 (2 U.S.C. 1301 et seq.) in  
18 the case of a claim alleged by the individual for a  
19 violation of section 201(a)(1) of such Act (2 U.S.C.  
20 1311(a)(1));

21 (4) the Attorney General shall have the same  
22 powers as the Attorney General has to administer  
23 and enforce—

24 (A) title VII of the Civil Rights Act of  
25 1964 (42 U.S.C. 2000e et seq.); or

1 (B) sections 302 and 304 of the Govern-  
2 ment Employee Rights Act of 1991 (2 U.S.C.  
3 1202 and 1220);

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

7 (5) the President, the Commission, and the  
8 Merit Systems Protection Board shall have the same  
9 powers as the President, the Commission, and the  
10 Board, respectively, have to administer and enforce  
11 chapter 5 of title 3, United States Code, in the case  
12 of a claim alleged by the individual for a violation  
13 of section 411 of such title;

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

17 (A) title VII of the Civil Rights Act of  
18 1964 (42 U.S.C. 2000e et seq.) in the case of  
19 a claim alleged by the individual for a violation  
20 of such title;

21 (B) sections 302 and 304 of the Govern-  
22 ment Employee Rights Act of 1991 (2 U.S.C.  
23 1202 and 1220) in the case of a claim alleged  
24 by the individual for a violation of section  
25 302(a)(1) of such Act (2 U.S.C. 1202(a)(1));

1 (C) the Congressional Accountability Act  
2 of 1995 (2 U.S.C. 1301 et seq.) in the case of  
3 a claim alleged by the individual for a violation  
4 of section 201(a)(1) of such Act (2 U.S.C.  
5 1311(a)(1)); and

6 (D) chapter 5 of title 3, United States  
7 Code, in the case of a claim alleged by the indi-  
8 vidual for a violation of section 411 of such  
9 title.

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

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

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

23 (3) the procedures and remedies applicable for  
24 a violation of section 201(a)(1) of the Congressional  
25 Accountability Act of 1995 (2 U.S.C. 1311(a)(1)) in

1 the case of a claim alleged by the individual for a  
2 violation of such section; and

3 (4) the procedures and remedies applicable for  
4 a violation of section 411 of title 3, United States  
5 Code, in the case of a claim alleged by the individual  
6 for a violation of such section.

7 (c) OTHER APPLICABLE PROVISIONS.—With respect  
8 to a claim alleged by a covered employee (as defined in  
9 section 101 of the Congressional Accountability Act of  
10 1995 (2 U.S.C. 1301)) for a violation of this Act, title  
11 III of the Congressional Accountability Act of 1995 (2  
12 U.S.C. 1381 et seq.) shall apply in the same manner as  
13 such title applies with respect to a claim alleged by such  
14 a covered employee for a violation of section 201(a)(1) of  
15 such Act (2 U.S.C. 1311(a)(1)).

16 **SEC. 13. STATE AND FEDERAL IMMUNITY.**

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

21 (b) REMEDIES AGAINST THE UNITED STATES AND  
22 THE STATES.—Notwithstanding any other provision of  
23 this Act, in an action or administrative proceeding against  
24 the United States or a State for a violation of this Act,  
25 remedies (including remedies at law and in equity, and

1 interest) are available for the violation to the same extent  
 2 as the remedies are available for a violation of title VII  
 3 of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.)  
 4 by a private entity, except that—

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

9 **SEC. 14. ATTORNEYS' FEES.**

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

19 **SEC. 15. POSTING NOTICES.**

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

1 **SEC. 16. REGULATIONS.**

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

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

9 (c) BOARD.—The Board referred to in section  
10 12(a)(3) shall have authority to issue regulations to carry  
11 out this Act, in accordance with section 304 of the Con-  
12 gressional Accountability Act of 1995 (2 U.S.C. 1384),  
13 with respect to covered employees, as defined in section  
14 101 of such Act (2 U.S.C. 1301).

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

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

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

24 **SEC. 18. SEVERABILITY.**

25 If any provision of this Act, or the application of the  
26 provision to any person or circumstance, is held to be in-

1 valid, the remainder of this Act and the application of the  
2 provision to any other person or circumstance shall not  
3 be affected by the invalidity.

4 **SEC. 19. EFFECTIVE DATE.**

5 (a) IN GENERAL.—Except as provided in subsection  
6 (b), this Act shall take effect 60 days after the date of  
7 enactment of this Act and shall not apply to conduct oc-  
8 ccurring before the effective date.

9 (b) PRESIDENTIAL OFFICES.—The second sentence  
10 of section 3(2), and sections 12(a)(5), 12(a)(6)(D),  
11 12(b)(4), and 16(d), shall take effect on, and shall not  
12 apply to conduct occurring before, the later of—

13 (1) October 1, 1997; and

14 (2) the effective date described in subsection

15 (a).

○