

106TH CONGRESS
1ST SESSION

H. R. 2355

To prohibit employment discrimination on the basis of sexual orientation.

IN THE HOUSE OF REPRESENTATIVES

JUNE 24, 1999

Mr. SHAYS (for himself, Mr. FRANK of Massachusetts, Mr. ABERCROMBIE, Mr. ACKERMAN, Mr. ALLEN, Mr. ANDREWS, Mr. BAIRD, Mr. BALDACCI, Ms. BALDWIN, Mr. BARRETT of Wisconsin, Mr. BECERRA, Ms. BERKLEY, Mr. BERMAN, Mrs. BIGGERT, Mr. BLAGOJEVICH, Mr. BLUMENAUER, Mr. BOEHLERT, Mr. BONIOR, Mr. BRADY of Pennsylvania, Mr. BROWN of California, Mr. BROWN of Ohio, Mr. CAMPBELL, Mrs. CAPPS, Mr. CAPUANO, Mr. CARDIN, Ms. CARSON, Mrs. CHRISTENSEN, Mr. CLAY, Mrs. CLAYTON, Mr. CLYBURN, Mr. CONYERS, Mr. COYNE, Mr. CROWLEY, Mr. CUMMINGS, Mr. DAVIS of Illinois, Mr. DEFazio, Ms. DEGETTE, Mr. DELAHUNT, Ms. DELAURO, Mr. DEUTSCH, Mr. DICKS, Mr. DIXON, Mr. DOOLEY of California, Mr. ENGEL, Ms. ESHOO, Mr. EVANS, Mr. FALEOMAVAEGA, Mr. FARR of California, Mr. FATTAH, Mr. FILNER, Mr. FORBES, Mr. FORD, Mr. FRELINGHUYSEN, Mr. FROST, Mr. GEJDENSON, Mr. GEPHARDT, Mr. GILMAN, Mr. GONZALEZ, Mr. GREENWOOD, Mr. GUTIERREZ, Mr. HASTINGS of Florida, Mr. HILLIARD, Mr. HINCHEY, Mr. HINOJOSA, Mr. HOEFFEL, Mr. HOLT, Ms. HOOLEY of Oregon, Mr. HORN, Mr. HOYER, Mr. INSLEE, Mr. JACKSON of Illinois, Ms. JACKSON-LEE of Texas, Mr. JEFFERSON, Ms. EDDIE BERNICE JOHNSON of Texas, Mrs. JOHNSON of Connecticut, Mrs. JONES of Ohio, Mrs. KELLY, Mr. KENNEDY of Rhode Island, Mr. KILDEE, Ms. KILPATRICK, Mr. KIND, Mr. KLINK, Mr. KOLBE, Mr. KUCINICH, Mr. KUYKENDALL, Mr. LaFALCE, Mr. LANTOS, Mr. LARSON, Mr. LEACH, Ms. LEE, Mr. LEVIN, Mr. LEWIS of Georgia, Ms. LOFGREN, Mrs. LOWEY, Mr. LUTHER, Mrs. MCCARTHY of New York, Mr. McDERMOTT, Mr. McGOVERN, Ms. MCKINNEY, Mr. McNULTY, Mrs. MALONEY of New York, Mr. MALONEY of Connecticut, Mr. MARKEY, Mr. MARTINEZ, Mr. MATSUI, Mr. MEEHAN, Mrs. MEEK of Florida, Mr. MEEKS of New York, Mr. MENENDEZ, Ms. MILLENDER-McDONALD, Mr. GEORGE MILLER of California, Mrs. MINK of Hawaii, Mr. MOAKLEY, Mr. MOORE, Mr. MORAN of Virginia, Mrs. MORELLA, Mr. NADLER, Mrs. NAPOLITANO, Mr. NEAL of Massachusetts, Ms. NORTON, Mr. OLVER, Mr. OWENS, Mr. PALLONE, Mr. PASCRELL, Mr. PASTOR, Mr. PAYNE, Ms. PELOSI, Ms. PRYCE of Ohio, Mr. RANGEL, Mr. REYES, Ms. RIVERS, Mr. RODRIGUEZ, Mr. ROTHMAN, Ms. ROYBAL-ALLARD, Mr. RUSH, Mr. SABO, Ms. SANCHEZ,

Mr. SANDERS, Mr. SAWYER, Ms. SCHAKOWSKY, Mr. SERRANO, Mr. SHERMAN, Ms. SLAUGHTER, Mr. SMITH of Washington, Ms. STABENOW, Mr. STARK, Mrs. TAUSCHER, Mr. THOMPSON of Mississippi, Mr. THOMPSON of California, Mrs. THURMAN, Mr. TIERNEY, Mr. TOWNS, Mr. TRAFICANT, Mr. UDALL of Colorado, Mr. UDALL of New Mexico, Mr. UNDERWOOD, Mr. VENTO, Ms. WATERS, Mr. WATT of North Carolina, Mr. WAXMAN, Mr. WEINER, Mr. WEXLER, Mr. WEYGAND, Ms. WOOLSEY, Mr. WU, and Mr. WYNN) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committees on House Administration, Government Reform, 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

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 1999”.

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

1 (3) to invoke congressional powers, including
2 the powers to enforce the 14th amendment to the
3 Constitution and to regulate interstate commerce, in
4 order to prohibit employment discrimination on the
5 basis of sexual orientation.

6 **SEC. 3. DEFINITIONS.**

7 In this Act:

8 (1) COMMISSION.—The term “Commission”
9 means the Equal Employment Opportunity Commis-
10 sion.

11 (2) COVERED ENTITY.—The term “covered en-
12 tity” means an employer, employment agency, labor
13 organization, or joint labor-management committee.

14 (3) EMPLOYER.—The term “employer”
15 means—

16 (A) a person engaged in an industry affect-
17 ing commerce (as defined in section 701(h) of
18 the Civil Rights Act of 1964 (42 U.S.C.
19 2000e(h))) who has 15 or more employees (as
20 defined in section 701(f) of such Act (42 U.S.C.
21 2000e(f)) for each working day in each of 20 or
22 more calendar weeks in the current or pre-
23 ceding calendar year, and any agent of such a
24 person, but does not include a bona fide private
25 membership club (other than a labor organiza-

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

3 (B) an employing authority to which sec-
4 tion 302(a)(1) of the Government Employee
5 Rights Act of 1991 (2 U.S.C. 1202(a)(1)) ap-
6 plies;

7 (C) an employing office, as defined in sec-
8 tion 101 of the Congressional Accountability
9 Act of 1995 (2 U.S.C. 1301) or section 401 of
10 title 3, United States Code; or

11 (D) an entity to which section 717(a) of
12 the Civil Rights Act of 1964 (42 U.S.C. 2000e–
13 16(a)) applies.

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

18 (5) EMPLOYMENT OR AN EMPLOYMENT OPPOR-
19 TUNITY.—Except as provided in section 10(a)(1),
20 the term “employment or an employment oppor-
21 tunity” includes job application procedures, referral
22 for employment, hiring, advancement, discharge,
23 compensation, job training, a term, condition, or
24 privilege of union membership, or any other term,
25 condition, or privilege of employment, but does not

1 include the service of a volunteer for which the vol-
2 unteer 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) EMPLOYER PRACTICES.—It shall be an unlawful
8 employment practice for an employer—

9 (1) to fail or refuse to hire or to discharge any
10 individual, or otherwise to discriminate against any
11 individual with respect to the compensation, terms,
12 conditions, or privileges of employment of the indi-
13 vidual, because of such individual’s sexual orienta-
14 tion; or

15 (2) to limit, segregate, or classify the employees
16 or applicants for employment of the employer in any
17 way that would deprive or tend to deprive any indi-
18 vidual of employment opportunities or otherwise ad-
19 versely affect the status of the individual as an em-
20 ployee, because of such individual’s sexual orienta-
21 tion.

22 (b) EMPLOYMENT AGENCY PRACTICES.—It shall be
23 an unlawful employment practice for an employment agen-
24 cy to fail or refuse to refer for employment, or otherwise
25 to discriminate against, any individual because of the sex-

1 ual orientation of the individual or to classify or refer for
2 employment any individual on the basis of the sexual ori-
3 entation of the individual.

4 (c) LABOR ORGANIZATION PRACTICES.—It shall be
5 an unlawful employment practice for a labor
6 organization—

7 (1) to exclude or to expel from its membership,
8 or otherwise to discriminate against, any individual
9 because of the sexual orientation of the individual;

10 (2) to limit, segregate, or classify its member-
11 ship or applicants for membership, or to classify or
12 fail or refuse to refer for employment any individual,
13 in any way that would deprive or tend to deprive any
14 individual of employment opportunities, or would
15 limit such employment opportunities or otherwise
16 adversely affect the status of the individual as an
17 employee or as an applicant for employment, be-
18 cause of such individual's sexual orientation; or

19 (3) to cause or attempt to cause an employer to
20 discriminate against an individual in violation of this
21 section.

22 (d) TRAINING PROGRAMS.—It shall be an unlawful
23 employment practice for any employer, labor organization,
24 or joint labor-management committee controlling appren-
25 ticeship or other training or retraining, including on-the-

1 job training programs, to discriminate against any indi-
2 vidual because of the sexual orientation of the individual
3 in admission to, or employment in, any program estab-
4 lished to provide apprenticeship or other training.

5 (e) ASSOCIATION.—An unlawful employment practice
6 described in any of subsections (a) through (d) shall be
7 considered to include an action described in that sub-
8 section, taken against an individual based on the sexual
9 orientation of a person with whom the individual associ-
10 ates or has associated.

11 (f) DISPARATE IMPACT.—Notwithstanding any other
12 provision of this Act, the fact that an employment practice
13 has a disparate impact, as the term “disparate impact”
14 is used in section 703(k) of the Civil Rights Act of 1964
15 (42 U.S.C. 2000e–2(k)), on the basis of sexual orientation
16 does not establish a prima facie violation of this Act.

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

18 (a) RETALIATION.—A covered entity shall not dis-
19 criminate against an individual because such individual
20 opposed any act or practice prohibited by this Act or be-
21 cause such individual made a charge, assisted, testified,
22 or participated in any manner in an investigation, pro-
23 ceeding, or 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 such individual's
2 having exercised, enjoyed, or assisted in or encouraged the
3 exercise or enjoyment of, any right granted or protected
4 by 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 domestic
8 partner of such individual.

9 **SEC. 7. COLLECTION OF STATISTICS PROHIBITED.**

10 The Commission shall not collect statistics on sexual
11 orientation from covered entities, or compel the collection
12 of such statistics by 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) ORDERS AND CONSENT DECREES.—Notwith-
21 standing any other provision of this Act, an order or con-
22 sent decree entered for a violation of this Act may not
23 include a quota, or preferential treatment to an individual,
24 based on sexual orientation.

1 **SEC. 9. RELIGIOUS EXEMPTION.**

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

4 (b) UNRELATED BUSINESS TAXABLE INCOME.—This
5 Act shall apply to employment or an employment oppor-
6 tunity for an employment position of a covered entity that
7 is a religious organization if the duties of the position per-
8 tain solely to activities of the organization that generate
9 unrelated business taxable income subject to taxation
10 under section 511(a) of the Internal Revenue Code of
11 1986.

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

14 (a) ARMED FORCES.—

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

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

23 (b) VETERANS' PREFERENCES.—This Act does not
24 repeal or modify any Federal, State, territorial, or local
25 law creating a special right or preference concerning em-
26 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 such individual for
20 a violation of such title, or of section 302(a)(1) of
21 the Government Employee Rights Act of 1991 (2
22 U.S.C. 1202(a)(1)), respectively;

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

1 claim alleged by such individual for a violation of
2 such 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 such 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 such individual for
20 a violation of such title, or of section 302(a)(1) of
21 the Government Employee Rights Act of 1991 (2
22 U.S.C. 1202(a)(1)), respectively;

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

1 Board, respectively, have to administer and enforce
2 chapter 5 of title 3, United States Code, in the case
3 of a claim alleged by such individual for a violation
4 of section 411 of such title;

5 (6) a court of the United States shall have the
6 same jurisdiction and powers as the court has to
7 enforce—

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

12 (B) sections 302 and 304 of the Govern-
13 ment Employee Rights Act of 1991 (2 U.S.C.
14 1202 and 1220) in the case of a claim alleged
15 by such individual for a violation of section
16 302(a)(1) of such Act (2 U.S.C. 1202(a)(1));

17 (C) the Congressional Accountability Act
18 of 1995 (2 U.S.C. 1301 et seq.) in the case of
19 a claim alleged by such individual for a viola-
20 tion of section 201(a)(1) of such Act (2 U.S.C.
21 1311(a)(1)); and

22 (D) chapter 5 of title 3, United States
23 Code, in the case of a claim alleged by such in-
24 dividual for a violation of section 411 of such
25 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 such individual for a violation of
8 such 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 such 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 such 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 such indi-
22 vidual 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 (d) PROHIBITION OF AFFIRMATIVE ACTION—Not-
8 withstanding any other provision of this section, affirma-
9 tive action for a violation of this Act may not be imposed.
10 Nothing in this section shall prevent the granting of relief
11 to any individual who suffers a violation of such individ-
12 ual’s rights provided in this Act.

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

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

18 (b) REMEDIES AGAINST THE UNITED STATES AND
19 THE STATES.—Notwithstanding any other provision of
20 this Act, in an action or administrative proceeding against
21 the United States or a State for a violation of this Act,
22 remedies (including remedies at law and in equity, and
23 interest) are available for the violation to the same extent
24 as the remedies are available for a violation of title VII

1 of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.)

2 by a private entity, except that—

3 (1) punitive damages are not available; and

4 (2) compensatory damages are available to the

5 extent specified in section 1977A(b) of the Revised

6 Statutes (42 U.S.C. 1981a(b)).

7 **SEC. 14. ATTORNEYS' FEES.**

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

17 **SEC. 15. POSTING NOTICES.**

18 A covered entity who is required to post notices de-
19 scribed in section 711 of the Civil Rights Act of 1964 (42
20 U.S.C. 2000e–10) shall post notices for employees, appli-
21 cants 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.

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

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