

106TH CONGRESS
1ST SESSION

S. 1276

To prohibit employment discrimination on the basis of sexual orientation.

IN THE SENATE OF THE UNITED STATES

JUNE 24, 1999

Mr. JEFFORDS (for himself, Mr. KENNEDY, Mr. LIEBERMAN, Mr. CHAFEE, Mr. DASCHLE, Mr. SPECTER, Mr. DODD, Mr. HARKIN, Ms. MIKULSKI, Mr. BINGAMAN, Mr. WELLSTONE, Mrs. MURRAY, Mr. REED, Mr. LEAHY, Ms. LANDRIEU, Mr. REID, Mr. WYDEN, Mr. SARBANES, Mr. KERRY, Mr. INOUE, Mr. LAUTENBERG, Mr. ROBB, Mr. CLELAND, Mr. MOYNIHAN, Mr. SCHUMER, Mr. AKAKA, Mr. DURBIN, Mrs. BOXER, Mr. TORRICELLI, Mr. KERREY, Mr. LEVIN, Mr. FEINGOLD, Mr. BRYAN, Mrs. FEINSTEIN, and Mr. KOHL) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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—

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, or joint labor-management committee.

20 (3) EMPLOYER.—The term “employer”
21 means—

22 (A) a person engaged in an industry affect-
23 ing commerce (as defined in section 701(h) of
24 the Civil Rights Act of 1964 (42 U.S.C.
25 2000e(h))) who has 15 or more employees (as

1 defined in section 701(f) of such Act (42 U.S.C.
2 2000e(f)) for each working day in each of 20 or
3 more calendar weeks in the current or pre-
4 ceding calendar year, and any agent of such a
5 person, but does not include a bona fide private
6 membership club (other than a labor organiza-
7 tion) that is exempt from taxation under section
8 501(c) of the Internal Revenue Code of 1986;

9 (B) an employing authority to which sec-
10 tion 302(a)(1) of the Government Employee
11 Rights Act of 1991 (2 U.S.C. 1202(a)(1)) ap-
12 plies;

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

17 (D) an entity to which section 717(a) of
18 the Civil Rights Act of 1964 (42 U.S.C. 2000e-
19 16(a)) applies.

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

24 (5) EMPLOYMENT OR AN EMPLOYMENT OPPOR-
25 TUNITY.—Except as provided in section 10(a)(1),

the term “employment or an employment opportunity” includes job application procedures, referral for employment, hiring, advancement, discharge, compensation, job training, a term, condition, or privilege of union membership, or any other term, condition, or privilege of employment, but does not include the service of a volunteer for which the volunteer receives no compensation.

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

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

(8) RELIGIOUS ORGANIZATION.—The term “religious organization” means—

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

(B) a school, college, university, or other educational institution or institution of learning, if—

(i) the institution is in whole or substantial part controlled, managed, owned,

or supported by a religion, religious corporation, association, or society; or

(ii) the curriculum of the institution is directed toward the propagation of a religion.

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

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

SEC. 4. DISCRIMINATION PROHIBITED.

(a) EMPLOYER PRACTICES.—It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to the compensation, terms, conditions, or privileges of employment of the individual, because of such individual’s sexual orientation; or

(2) to limit, segregate, or classify the employees or applicants for employment of the employer in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise ad-

1 versely affect the status of the individual as an em-
2 ployee, because of such individual's sexual orienta-
3 tion.

4 (b) EMPLOYMENT AGENCY PRACTICES.—It shall be
5 an unlawful employment practice for an employment agen-
6 cy to fail or refuse to refer for employment, or otherwise
7 to discriminate against, any individual because of the sex-
8 ual orientation of the individual or to classify or refer for
9 employment any individual on the basis of the sexual ori-
10 entation of the individual.

11 (c) LABOR ORGANIZATION PRACTICES.—It shall be
12 an unlawful employment practice for a labor
13 organization—

14 (1) to exclude or to expel from its membership,
15 or otherwise to discriminate against, any individual
16 because of the sexual orientation of the individual;

17 (2) to limit, segregate, or classify its member-
18 ship or applicants for membership, or to classify or
19 fail or refuse to refer for employment any individual,
20 in any way that would deprive or tend to deprive any
21 individual of employment opportunities, or would
22 limit such employment opportunities or otherwise
23 adversely affect the status of the individual as an
24 employee or as an applicant for employment, be-
25 cause of such individual's sexual orientation; or

1 (3) to cause or attempt to cause an employer to
2 discriminate against an individual in violation of this
3 section.

4 (d) TRAINING PROGRAMS.—It shall be an unlawful
5 employment practice for any employer, labor organization,
6 or joint labor-management committee controlling appren-
7 ticeship or other training or retraining, including on-the-
8 job training programs, to discriminate against any indi-
9 vidual because of the sexual orientation of the individual
10 in admission to, or employment in, any program estab-
11 lished to provide apprenticeship or other training.

12 (e) ASSOCIATION.—An unlawful employment practice
13 described in any of subsections (a) through (d) shall be
14 considered to include an action described in that sub-
15 section, taken against an individual based on the sexual
16 orientation of a person with whom the individual associ-
17 ates or has associated.

18 (f) DISPARATE IMPACT.—Notwithstanding any other
19 provision of this Act, the fact that an employment practice
20 has a disparate impact, as the term “disparate impact”
21 is used in section 703(k) of the Civil Rights Act of 1964
22 (42 U.S.C. 2000e–2(k)), on the basis of sexual orientation
23 does not establish a prima facie violation of this Act.

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

2 (a) RETALIATION.—A covered entity shall not dis-
3 criminate against an individual because such individual
4 opposed any act or practice prohibited by this Act or be-
5 cause such individual made a charge, assisted, testified,
6 or participated in any manner in an investigation, pro-
7 ceeding, or hearing under this Act.

8 (b) COERCION.—A person shall not coerce, intimi-
9 date, threaten, or interfere with any individual in the exer-
10 cise or enjoyment of, or on account of such individual's
11 having exercised, enjoyed, or assisted in or encouraged the
12 exercise or enjoyment of, any right granted or protected
13 by this Act.

14 **SEC. 6. BENEFITS.**

15 This Act does not apply to the provision of employee
16 benefits to an individual for the benefit of the domestic
17 partner of such individual.

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

19 The Commission shall not collect statistics on sexual
20 orientation from covered entities, or compel the collection
21 of such statistics by covered entities.

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

24 (a) QUOTAS.—A covered entity shall not adopt or im-
25 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) ORDERS AND CONSENT DECREES.—Notwith-
 5 standing any other provision of this Act, an order or con-
 6 sent decree entered for a violation of this Act may not
 7 include a quota, or preferential treatment to an individual,
 8 based on sexual orientation.

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

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

12 (b) UNRELATED BUSINESS TAXABLE INCOME.—This
 13 Act shall apply to employment or an employment oppor-
 14 tunity for an employment position of a covered entity that
 15 is a religious organization if the duties of the position per-
 16 tain solely to activities of the organization that generate
 17 unrelated business taxable income subject to taxation
 18 under section 511(a) of the Internal Revenue Code of
 19 1986.

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

22 (a) ARMED FORCES.—

23 (1) EMPLOYMENT OR AN EMPLOYMENT OPPOR-
 24 TUNITY.—In this Act, the term “employment or an
 25 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 such individual for
5 a violation of such title, or of section 302(a)(1) of
6 the Government Employee Rights Act of 1991 (2
7 U.S.C. 1202(a)(1)), respectively;

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

14 (3) the Board (as defined in section 101 of the
15 Congressional Accountability Act of 1995 (2 U.S.C.
16 1301)) shall have the same powers as the Board has
17 to administer and enforce the Congressional Ac-
18 countability Act of 1995 (2 U.S.C. 1301 et seq.) in
19 the case of a claim alleged by such individual for a
20 violation of section 201(a)(1) of such Act (2 U.S.C.
21 1311(a)(1));

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

1 (A) title VII of the Civil Rights Act of
2 1964 (42 U.S.C. 2000e et seq.); or

3 (B) sections 302 and 304 of the Govern-
4 ment Employee Rights Act of 1991 (2 U.S.C.
5 1202 and 1220);

6 in the case of a claim alleged by such individual for
7 a violation of such title, or of section 302(a)(1) of
8 the Government Employee Rights Act of 1991 (2
9 U.S.C. 1202(a)(1)), respectively;

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

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

20 (A) title VII of the Civil Rights Act of
21 1964 (42 U.S.C. 2000e et seq.) in the case of
22 a claim alleged by such individual for a viola-
23 tion of such title;

24 (B) sections 302 and 304 of the Govern-
25 ment Employee Rights Act of 1991 (2 U.S.C.

1 1202 and 1220) in the case of a claim alleged
 2 by such individual for a violation of section
 3 302(a)(1) of such Act (2 U.S.C. 1202(a)(1));

4 (C) the Congressional Accountability Act
 5 of 1995 (2 U.S.C. 1301 et seq.) in the case of
 6 a claim alleged by such individual for a viola-
 7 tion of section 201(a)(1) of such Act (2 U.S.C.
 8 1311(a)(1)); and

9 (D) chapter 5 of title 3, United States
 10 Code, in the case of a claim alleged by such in-
 11 dividual for a violation of section 411 of such
 12 title.

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

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

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

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

6 (4) the procedures and remedies applicable for
7 a violation of section 411 of title 3, United States
8 Code, in the case of a claim alleged by such indi-
9 vidual for a violation of such section.

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

19 (d) PROHIBITION OF AFFIRMATIVE ACTION—Not-
20 withstanding any other provision of this section, affirma-
21 tive action for a violation of this Act may not be imposed.
22 Nothing in this section shall prevent the granting of relief
23 to any individual who suffers a violation of such individ-
24 ual’s rights provided in this Act.

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

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

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

15 (1) punitive damages are not available; and

16 (2) compensatory damages are available to the
17 extent specified in section 1977A(b) of the Revised
18 Statutes (42 U.S.C. 1981a(b)).

19 **SEC. 14. ATTORNEYS' FEES.**

20 Notwithstanding any other provision of this Act, in
21 an action or administrative proceeding for a violation of
22 this Act, an entity described in section 12(a) (other than
23 paragraph (4) of such section), in the discretion of the
24 entity, may allow the prevailing party, other than the
25 Commission or the United States, a reasonable attorney's
26 fee (including expert fees) as part of the costs. The Com-

1 mission and the United States shall be liable for the costs
2 to the same extent as a private person.

3 **SEC. 15. POSTING NOTICES.**

4 A covered entity who is required to post notices de-
5 scribed in section 711 of the Civil Rights Act of 1964 (42
6 U.S.C. 2000e–10) shall post notices for employees, appli-
7 cants for employment, and members, to whom the provi-
8 sions specified in section 12(b) apply, that describe the
9 applicable provisions of this Act in the manner prescribed
10 by, and subject to the penalty provided under, section 711
11 of the Civil Rights Act of 1964.

12 **SEC. 16. REGULATIONS.**

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

16 (b) LIBRARIAN OF CONGRESS.—The Librarian of
17 Congress shall have authority to issue regulations to carry
18 out this Act with respect to employees of the Library of
19 Congress.

20 (c) BOARD.—The Board referred to in section
21 12(a)(3) shall have authority to issue regulations to carry
22 out this Act, in accordance with section 304 of the Con-
23 gressional Accountability Act of 1995 (2 U.S.C. 1384),
24 with respect to covered employees, as defined in section
25 101 of such Act (2 U.S.C. 1301).

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

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

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

10 **SEC. 18. SEVERABILITY.**

11 If any provision of this Act, or the application of the
12 provision to any person or circumstance, is held to be in-
13 valid, the remainder of this Act and the application of the
14 provision to any other person or circumstance shall not
15 be affected by the invalidity.

16 **SEC. 19. EFFECTIVE DATE.**

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

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