

Calendar No. 479

110TH CONGRESS
1ST SESSION

H. R. 3685

IN THE SENATE OF THE UNITED STATES

NOVEMBER 8, 2007

Received; read the first time

NOVEMBER 13, 2007

Read the second time and placed on the calendar

AN ACT

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 2007”.

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;

1 (2) to provide meaningful and effective remedies for employment discrimination on the basis of
2 sexual orientation; and
3

4 (3) to invoke congressional powers, including
5 the powers to enforce the 14th amendment to the
6 Constitution, and to regulate interstate commerce
7 and provide for the general welfare pursuant to section 8 of article I of the Constitution, in order to
8 prohibit employment discrimination on the basis of
9 sexual orientation.
10

11 **SEC. 3. DEFINITIONS.**

12 (a) IN GENERAL.—In this Act:

13 (1) COMMISSION.—The term “Commission”
14 means the Equal Employment Opportunity Commission.
15

16 (2) COVERED ENTITY.—The term “covered entity” means an employer, employment agency, labor
17 organization, or joint labor-management committee.
18

19 (3) EMPLOYEE.—

20 (A) IN GENERAL.—the term “employee”
21 means—

22 (i) an employee as defined in section
23 701(f) of the Civil Rights Act of 1964 (42
24 U.S.C. 2000e(f);

1 (ii) a Presidential appointee or State
2 employee to which section 302(a)(1) of the
3 Government Employee Rights Act of 1991
4 (42 U.S.C. 2000e–16(a)(1) applies;

5 (iii) a covered employee, as defined in
6 section 101 of the Congressional Account-
7 ability Act of 1995 (2 U.S.C. 1301) or sec-
8 tion 411(c) of title 3, United States Code;
9 or

10 (iv) an employee or applicant to which
11 section 717(a) of the Civil Rights Act of
12 1964 (42 U.S.C. 2000e–16(a)) applies.

13 (B) EXCEPTION.—The provisions of this
14 Act that apply to an employee or individual
15 shall not apply to a volunteer who receives no
16 compensation.

17 (4) EMPLOYER.—The term “employer”
18 means—

19 (A) a person engaged in an industry affect-
20 ing commerce (as defined in section (701)(h) of
21 the Civil Rights Act of 1964 (42 U.S.C.
22 2000e(h)) who has 15 or more employees (as
23 defined in subparagraphs (A)(i) and (B) of
24 paragraph (3)) for each working day in each of
25 20 or more calendar weeks in the current or

1 preceding calendar year, and any agent of such
2 a person, but does not include a bona fide pri-
3 vate membership club (other than a labor orga-
4 nization) that is exempt from taxation under
5 section 501(c) of the Internal Revenue Code of
6 1986;

7 (B) an employing authority to which sec-
8 tion 302(a)(1) of the Government Employee
9 Rights Act of 1991 applies;

10 (C) an employing office, as defined in sec-
11 tion 101 of the Congressional Accountability
12 Act of 1995 or section 411(c) of title 3, United
13 States Code; or

14 (D) an entity to which section 717(a) of
15 the Civil Rights Act of 1964 applies.

16 (5) 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 (6) LABOR ORGANIZATION.—The term “labor
21 organization” has the meaning given the term in
22 section 701(d) of the Civil Rights Act of 1964 (42
23 U.S.C. 2000e(d)).

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

4 (8) SEXUAL ORIENTATION.—The term “sexual
5 orientation” means homosexuality, heterosexuality,
6 or bisexuality.

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

10 (b) APPLICATION OF DEFINITIONS.—For purposes of
11 this section, a reference in section 701 of the Civil Rights
12 Act of 1964—

13 (1) to an employee or an employer shall be con-
14 sidered to refer to an employee (as defined in para-
15 graph (3)) or an employer (as defined in paragraph
16 (4)), respectively, except as provided in paragraph
17 (2) below; and

18 (2) to an employer in subsection (f) of that sec-
19 tion shall be considered to refer to an employer (as
20 defined in paragraph (4)(A)).

21 **SEC. 4. EMPLOYMENT DISCRIMINATION PROHIBITED.**

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

24 (1) to fail or refuse to hire or to discharge any
25 individual, or otherwise discriminate against any in-

1 dividual with respect to the compensation, terms,
2 conditions, or privileges of employment of the indi-
3 vidual, because of such individual's actual or per-
4 ceived sexual orientation; or

5 (2) to limit, segregate, or classify the employees
6 or applicants for employment of the employer in any
7 way that would deprive or tend to deprive any indi-
8 vidual of employment or otherwise adversely affect
9 the status of the individual as an employee, because
10 of such individual's actual or perceived sexual ori-
11 entation.

12 (b) EMPLOYMENT AGENCY PRACTICES.—It shall be
13 an unlawful employment practice for an employment agen-
14 cy to fail or refuse to refer for employment, or otherwise
15 to discriminate against, any individual because of the ac-
16 tual or perceived sexual orientation of the individual or
17 to classify or refer for employment any individual on the
18 basis of the actual or perceived sexual orientation of the
19 individual.

20 (c) LABOR ORGANIZATION PRACTICES.—It shall be
21 an unlawful employment practice for a labor organiza-
22 tion—

23 (1) to exclude or to expel from its membership,
24 or otherwise to discriminate against, any individual

1 because of the actual or perceived sexual orientation
2 of the individual;

3 (2) to limit, segregate, or classify its member-
4 ship or applicants for membership, or to classify or
5 fail or refuse to refer for employment any individual,
6 in any way that would deprive or tend to deprive any
7 individual of employment, or would limit such em-
8 ployment or otherwise adversely affect the status of
9 the individual as an employee or as an applicant for
10 employment because of such individual's actual or
11 perceived sexual orientation; or

12 (3) to cause or attempt to cause an employer to
13 discriminate against an individual in violation of this
14 section.

15 (d) TRAINING PROGRAMS.—It shall be an unlawful
16 employment practice for any employer, labor organization,
17 or joint labor-management committee controlling appren-
18 ticeship or other training or retraining, including on-the-
19 job training programs, to discriminate against any indi-
20 vidual because of the actual or perceived sexual orientation
21 of the individual in admission to, or employment in, any
22 program established to provide apprenticeship or other
23 training.

24 (e) ASSOCIATION.—An unlawful employment practice
25 described in any of subsections (a) through (d) shall be

1 considered to include an action described in that sub-
2 section, taken against an individual based on the actual
3 or perceived sexual orientation of a person with whom the
4 individual associates or has associated.

5 (f) NO PREFERENTIAL TREATMENT OR QUOTAS.—
6 Nothing in this Act shall be construed or interpreted to
7 require or permit—

8 (1) any covered entity to grant preferential
9 treatment to any individual or to any group because
10 of the actual or perceived sexual orientation of such
11 individual or group on account of an imbalance
12 which may exist with respect to the total number or
13 percentage of persons of any actual or perceived sex-
14 ual orientation employed by any employer, referred
15 or classified for employment by any employment
16 agency or labor organization, admitted to member-
17 ship or classified by any labor organization, or ad-
18 mitted to, or employed in, any apprenticeship or
19 other training program, in comparison with the total
20 number or percentage of persons of such actual or
21 perceived sexual orientation in any community,
22 State, section, or other area, or in the available work
23 force in any community, State, section, or other
24 area; or

1 (2) the adoption or implementation by a cov-
 2 ered entity of a quota on the basis of actual or per-
 3 ceived sexual orientation.

4 (g) DISPARATE IMPACT.—Only disparate treatment
 5 claims may be brought under this Act.

6 **SEC. 5. RETALIATION PROHIBITED.**

7 It shall be an unlawful employment practice for a cov-
 8 ered entity to discriminate against an individual because
 9 such individual (1) opposed any practice made an unlawful
 10 employment practice by this Act; or (2) made a charge,
 11 testified, assisted, or participated in any manner in an in-
 12 vestigation, proceeding, or hearing under this Act.

13 **SEC. 6. EXEMPTION FOR RELIGIOUS ORGANIZATIONS.**

14 This Act shall not apply to a corporation, association,
 15 educational institution, or society that is exempt from the
 16 religious discrimination provisions of title VII of the Civil
 17 Rights Acts of 1964 pursuant to section 702(a) or
 18 703(e)(2) of such Act (42 U.S.C. 2000e-1(a); 2000e-
 19 2(e)(2)).

20 **SEC. 7. NONAPPLICATION TO MEMBERS OF THE ARMED**
 21 **FORCES; VETERANS' PREFERENCES.**

22 (a) ARMED FORCES.—

23 (1) EMPLOYMENT.—In this Act, the term “em-
 24 ployment” does not apply to the relationship be-

1 tween the United States and members of the Armed
2 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 title does not
7 repeal or modify any Federal, State, territorial, or local
8 law creating a special right or preference concerning em-
9 ployment for a veteran.

10 **SEC. 8. CONSTRUCTION.**

11 (a) EMPLOYER RULES AND POLICIES.—

12 (1) IN GENERAL.—Nothing in this Act shall be
13 construed to prohibit a covered entity from enforcing
14 rules and policies that do not intentionally cir-
15 cumvent the purposes of this Act, if the rules or
16 policies are designed for, and uniformly applied to,
17 all individuals regardless of actual or perceived sex-
18 ual orientation.

19 (2) SEXUAL HARASSMENT.—Nothing in this
20 Act shall be construed to limit a covered entity from
21 taking adverse action against an individual because
22 of a charge of sexual harassment against that indi-
23 vidual, provided that rules and policies on sexual
24 harassment, including when adverse action is taken,
25 are designed for, and uniformly applied to, all indi-

1 viduals regardless of actual or perceived sexual ori-
2 entation.

3 (b) EMPLOYEE BENEFITS.—Nothing in this Act shall
4 be construed to require a covered entity to treat a couple
5 who are not married in the same manner as the covered
6 entity treats a married couple for purposes of employee
7 benefits.

8 (c) DEFINITION OF MARRIAGE.—As used in this Act,
9 the term “married” or “marry” refer to marriage as such
10 term is defined in section 7 of title I, United States Code
11 (referred to as the Defense of Marriage Act).

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

13 The Commission shall not collect statistics on actual
14 or perceived sexual orientation from covered entities, or
15 compel the collection of such statistics by covered entities.

16 **SEC. 10. 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 (42 U.S.C.
3 2000e–16b and 2000e–16c),
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 (42
7 U.S.C. 2000e–16b(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 (42 U.S.C.
5 2000e–16b and 2000e–16c);

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 (42
9 U.S.C. 2000e–16b(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; and

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

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 (42 U.S.C.

1 2000e–16b and 2000e–16c) in the case of a
2 claim alleged by such individual for a violation
3 of section 302(a)(1) of such Act (42 U.S.C.
4 2000e–16b(a)(1));

5 (C) the Congressional Accountability Act
6 of 1995 (2 U.S.C. 1301 et seq.) in the case of
7 a claim alleged by such individual for a viola-
8 tion of section 201(a)(1) of such Act (2 U.S.C.
9 1311(a)(1)); and

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

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

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

22 (2) the procedures and remedies applicable for
23 a violation of section 302(a)(1) of the Government
24 Employee Rights Act of 1991 (2 U.S.C. 1202(a)(1))

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

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

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

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

21 **SEC. 11. STATE AND FEDERAL IMMUNITY.**

22 (a) STATE IMMUNITY.—A State shall not be immune
23 under the 11th amendment to the Constitution from a suit
24 described in subsection (b) and brought in a Federal court
25 of competent jurisdiction for a violation of this Act.

1 (b) REMEDIES FOR STATE EMPLOYEES.—

2 (1) IN GENERAL.—

3 (A) WAIVER.—A State’s receipt or use of
4 Federal financial assistance for any program or
5 activity of a State shall constitute a waiver of
6 sovereign immunity, under the 11th amendment
7 to the Constitution or otherwise, to a suit
8 brought by an employee or applicant for em-
9 ployment of that program or activity under this
10 Act for a remedy authorized under subsection
11 (c).

12 (B) DEFINITION.—In this paragraph, the
13 term “program or activity” has the meaning
14 given the term in section 606 of the Civil
15 Rights Act of 1964 (42 U.S.C. 2000d–4a).

16 (2) OFFICIALS.—An official of a State may be
17 sued in the official capacity of the official by any
18 employee or applicant for employment who has com-
19 plied with the applicable procedures of section 10,
20 for equitable relief that is authorized under this Act.
21 In such a suit the court may award to the prevailing
22 party those costs authorized by section 722 of the
23 Revised Statutes of the United States (42 U.S.C.
24 1988).

1 (3) **EFFECTIVE DATE.**—With respect to a par-
2 ticular program or activity, paragraphs (1) and (2)
3 apply to conduct occurring on or after the day, after
4 the date of enactment of this Act, on which a State
5 first receives or uses Federal financial assistance for
6 that program or activity.

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

16 (1) punitive damages are not available; and

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

20 **SEC. 12. ATTORNEYS' FEES.**

21 Notwithstanding any other provision of this Act, in
22 an action or administrative proceeding for a violation of
23 this Act, an entity described in section 10(a) (other than
24 paragraph (4) of such section), in the discretion of the
25 entity, may allow the prevailing party, other than the

1 Commission or the United States, a reasonable attorney's
2 fee (including expert fees) as part of the costs. The Com-
3 mission and the United States shall be liable for the costs
4 to the same extent as a private person.

5 **SEC. 13. POSTING NOTICES.**

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

14 **SEC. 14. REGULATIONS.**

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

18 (b) LIBRARIAN OF CONGRESS.—The Librarian of
19 Congress shall have authority to issue regulations to carry
20 out this Act with respect to employees and applicants for
21 employment of the Library of Congress.

22 (c) BOARD.—The Board referred to in section
23 10(a)(3) shall have authority to issue regulations to carry
24 out this Act, in accordance with section 304 of the Con-
25 gressional Accountability Act of 1995 (2 U.S.C. 1384),

1 with respect to covered employees, as defined in section
2 101 of such Act (2 U.S.C. 1301).

3 (d) PRESIDENT.—The President shall have authority
4 to issue regulations to carry out this Act with respect to
5 covered employees, as defined in section 411(c) of title 3,
6 United States Code.

7 **SEC. 15. RELATIONSHIP TO OTHER LAWS.**

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

13 **SEC. 16. SEVERABILITY.**

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

19 **SEC. 17. EFFECTIVE DATE.**

20 This Act shall take effect 6 months after the date
21 of the enactment of this Act and shall not apply to conduct
22 occurring before the effective date.

Passed the House of Representatives November 7,
2007.

Attest: LORRAINE C. MILLER,
Clerk.

Calendar No. 479

110TH CONGRESS
1ST Session

H. R. 3685

AN ACT

To prohibit employment discrimination on the basis
of sexual orientation.

NOVEMBER 13, 2007

Read the second time and placed on the calendar