S. 1222

At the request of Mrs. LINCOLN, the name of the Senator from Georgia (Mr. ISAKSON) was added as a cosponsor of S. 1222, a bill to amend the Internal Revenue Code of 1986 to extend and expand the benefits for businesses operating in empowerment zones, enterprise communities, or renewal communities, and for other purposes.

S. 1291

At the request of Mrs. GILLIBRAND, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 1291, a bill to amend the Internal Revenue Code of 1986 to allow employers a credit against income tax for the cost of teleworking equipment and expenses.

S. 1401

At the request of Mr. MARTINEZ, the name of the Senator from Kentucky (Mr. BUNNING) was added as a cosponsor of S. 1401, a bill to provide for the award of a gold medal on behalf of Congress to Arnold Palmer in recognition of his service to the Nation in promoting excellence and good sportsmanship in golf.

S. 1422

At the request of Mrs. MURRAY, the names of the Senator from Maryland (Ms. MIKULSKI) and the Senator from Maryland (Mr. CARDIN) were added as cosponsors of S. 1422, a bill to amend the Family and Medical Leave Act of 1993 to clarify the eligibility requirements with respect to airline flight crews.

S. 1461

At the request of Mrs. BOXER, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. 1461, a bill to amend the Internal Revenue Code of 1986 to treat trees and vines producing fruit, nuts, or other crops as placed in service in the year in which it is planted for purposes of special allowance for depreciation.

S. 1480

At the request of Mr. KOHL, the name of the Senator from New York (Mrs. GILLIBRAND) was added as a cosponsor of S. 1480, a bill to amend the Child Nutrition Act of 1966 to establish a program to improve the health and education of children through grants to expand school breakfast programs, and for other purposes.

S. 1482

At the request of Mr. KERRY, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 1482, a bill to reauthorize the 21st Century Nanotechnology Research and Development Act, and for other purposes.

S. 1485

At the request of Mr. MARTINEZ, the name of the Senator from Louisiana (Mr. VITTER) was added as a cosponsor of S. 1485, a bill to improve hurricane preparedness by establishing the National Hurricane Research Initiative and for other purposes.

S. 1492

At the request of Mr. LAUTENBERG, his name was added as a cosponsor of S. 1492, a bill to amend the Public Health Service Act to fund breakthroughs in Alzheimer's disease research while providing more help to caregivers and increasing public education about prevention.

S. 1501

At the request of Mrs. MURRAY, the name of the Senator from Oregon (Mr. MERKLEY) was added as a cosponsor of S. 1501, a bill to provide a Federal tax exemption for forest conservation bonds, and for other purposes.

S. 1536

At the request of Mr. SCHUMER, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 1536, a bill to amend title 23, United States Code, to reduce the amount of Federal highway funding available to States that do not enact a law prohibiting an individual from writing, sending, or reading text messages while operating a motor vehicle.

S. 1557

At the request of Mr. BURR, the name of the Senator from North Carolina (Mrs. HAGAN) was added as a cosponsor of S. 1557, a bill to reinstate the Interim Management Strategy governing off-road vehicle use in the Cape Hatteras National Seashore, North Carolina, pending the issuance of a final rule for off-road vehicle use by the National Park Service.

S. CON. RES. 14

At the request of Mrs. LINCOLN, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. Con. Res. 14, a concurrent resolution supporting the Local Radio Freedom Act.

S. CON. RES. 25

At the request of Mr. MENENDEZ, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. Con. Res. 25, a concurrent resolution recognizing the value and benefits that community health centers provide as health care homes for over 18,000,000 individuals, and the importance of enabling health centers and other safety net providers to continue to offer accessible, affordable, and continuous care to their current patients and to every American who lacks access to preventive and primary care services.

S. CON. RES. 37

At the request of Mr. JOHANNS, the name of the Senator from Wisconsin (Mr. KOHL) was added as a cosponsor of S. Con. Res. 37, a concurrent resolution supporting the goals and ideals of senior caregiving and affordability.

S. RES. 112

At the request of Mr. BINGAMAN, his name was added as a cosponsor of S. Res. 112, a resolution designating February 8, 2010, as ''Boy Scouts of America Day'', in celebration of the 100th anniversary of the largest youth scouting organization in the United States.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LEAHY:

S. 1578. A bill to amend chapter 171 of title 28, United States Code, (commonly referred to as the Federal Torts Claims Act) to extend medical malpractice coverage to free clinics and the officers, governing board members, employees, and contractors of free clinics in the same manner and extend as certain Federal officers and employees; to the Committee on the Judiciary.

Mr. LEAHY. Mr. President, today I am introducing legislation to clarify the application of the Federal Tort Claims Act and how it applies to free medical clinics. In my home State of Vermont, free clinics provide important health care, and in these tough economic times they provide an essential safety net for many people. Free clinics in Vermont and around the country are struggling to pay medical malpractice insurance premiums, due to an ambiguity in the Federal law. Current law provides for physicians who volunteer in free clinics to receive medical malpractice coverage under the Federal Torts Claims Act, FTCA, but it is unclear whether other professionals serving the community in free clinics are also covered. Existing Federal law explicitly provides more comprehensive FTCA coverage to community health centers, including coverage for their boards, employees, contractors and officers. But free clinics currently must purchase malpractice insurance for their board members, employees, contractors and officers. Purchasing this coverage diverts thousands of dollars annually from each of the free clinics in the country. These are funds that could be directed to providing necessary healthcare to the uninsured. This is especially true in States like Vermont, where free clinics make a significant impact serving those in rural areas. Additionally, by removing this financial burden for free clinics, the impact of organizations like Volunteers in Medicine, which assists in setting up and staffing free clinics, will be that much greater. In clarifying current law, and at minimal expense to the Federal Government, we can increase the effectiveness of free clinics that serve and care for so many Americans.

This legislation would make it clear that FTCA coverage should be the same for community health centers and free clinics. Both of these institutions deserve our help and play a fundamental role in our communities. It is my understanding that this clarification would not dramatically raise medical malpractice defense costs of the Federal Government because free clinics do not perform high risk procedures like surgeries or births. I urge my fellow Senators to join me in supporting the important work that free clinics provide our communities.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 1578

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENSION OF MEDICAL MALPRACTICE COVERAGE TO FREE CLINICS.

(a) IN GENERAL.—Chapter 171 of title 28, United States Code, is amended by adding after section 2680 the following:

''§ 2681. Medical malpractice coverage for free clinics

''For purposes of applying the remedy against the United States provided by sections 1346(b) and 2672 of this title and for purposes of section 224 of Public Law 78–410 (42 U.S.C. 233) a free clinic defined under section 224(o)(3)(A) of that Act shall be treated as an entity described under section 224(g)(4) of that Act. The authorization of appropriations under section 224(o)(6)(A) of that Act shall apply to the acts or omissions of officers, governing board members, employees, and contractors of free clinics''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) TABLE OF SECTIONS.—The table of sections for chapter 171 of title 28, United States Code, is amended by adding at the end the following:

''2681. Medical malpractice coverage for free clinics.''.

(2) REFERENCE.—Section 224(g)(4) of the Public Law 78–410 (42 U.S.C. 233(g)(4)) is amended by inserting ''or a free clinic as provided under section 2681 of title 28, United States Code'' before the period.

SEC. 2. EFFECTIVE DATE.

The amendments made by this Act shall take effect on the date of enactment of this Act and apply to any act or omission which occurs on or after that date.

By Mr. REID (for Mr. KENNEDY (for himself, Mrs. MURRAY, Mr. DODD, Mr. HARKIN, Mr. BINGAMAN, Mr. SANDERS, Mr. BROWN, Mr. CASEY, Mr. MERKLEY, Mr. FRANKEN, Mr. LEAHY, Mr. AKAKA, Mrs. BOXER, Mr. FEINGOLD, Mr. DURBIN, Mr. SCHUMER, Ms. STABENOW, Mr. LAUTENBERG, Mr. MENENDEZ, and Mr. WHITEHOUSE)):

S. 1580. A bill to amend the Occupational Safety and Health Act of 1970 to expand coverage under the Act, to increase protections for whistleblowers, to increase penalties for certain violators, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. KENNEDY. Mr. President, today I am pleased to introduce the Protecting America's Workers Act. Almost 40 years ago, Congress set out to guarantee a safe workplace for all Americans. The Occupational Safety and Health Act of 1970 was landmark legislation that has dramatically improved the well-being of working men and women.

Since then, the annual job fatality rate has dropped from 18 deaths per 100,000 workers to less than four. Thousands of lives have been saved each year. These are not abstract numbers—they represent thousands of families who have been spared the pain and heartache of losing a loved one on the job.

We are enormously proud of the progress we have made, but we also know that too many workers continue to face needless dangers in the workplace. In 2007, almost 5,500 workers were killed on the job and 4 million other workers became ill or were injured. Fifteen workers still die on the job every day, and nearly 11,000 who are injured or become ill because of dangerous conditions.

We now have strong partners in the White House and at the Department of Labor who are committed to making our workplaces safer. But they need action by Congress as well. That is why today we are reintroducing the Protecting America's Workers Act, to take concrete steps to address many of the failures of the existing law.

First, this legislation expands the coverage of the current job safety laws to protect the millions of public employees and transportation workers who are not covered by these laws. In Massachusetts alone, 350,000 public sector workers lack the protections granted by the federal workplace safety law.

Our bill also protects workers who speak up about unsafe conditions on the job, by updating OSHA's whistleblower provisions. OSHA inspectors can't be in every workplace, every day. We must rely on workers who have the courage to come forward when they know their employer is cutting corners on safety. This legislation makes good on the promise to stand by those workers and guarantee they don't have to sacrifice their jobs in order to do the right thing.

In addition, the legislation gives workers and their families and representatives a seat at the table on safety issues. It includes sensible reforms to ensure that victims and their families have a right to talk to OSHA before a citation issues, to obtain copies of important documents, to be informed about their rights, and to have their voices heard before OSHA accepts a settlement that lets an employer off the hook for endangering workers.

Finally, a critical element of this bill is the increase in penalties on employers who turn their backs on the safety of their workers. Too many employers in our country blatantly ignore the law, and too often they are not held accountable. They pay only minimal fines, which they treat as just another cost of doing business.

Last year, my office issued a report that showed that the median penalty for a workplace fatality was only $3,675. In other words, in cases investigated by OSHA where workers were killed on the job, half of all employers were fined $3,675 or less. Workers' lives are obviously worth far more than that. We know this administration will do better, but it needs our help.

The bill makes reasonable increases in civil penalties—especially in the most serious cases. It also creates a strong criminal penalty, including the possibility of felony charges and significant prison terms. These changes will create the deterrence we need so that employers will think twice before they gamble with workers' lives to save a few dollars. We need to send a strong message that it is unacceptable to treat workers as expendable or disposable.

Earlier this year a brave young woman, Tammy Miser, testified before our Labor Committee about her brother Shawn, who was killed in an explosion at the Hayes Lemmerz manufacturing plant in Huntington, Indiana in 2003. We can't bring Shawn back and we can't ease Tammy's pain at the loss of her beloved brother. But we can stand with her as she pursues her life's work since then of speaking out for the right of every worker to come home safely at the end of the day. I urge my colleagues to join me in honoring the millions of hardworking Americans who deserve real protection by supporting the Protecting America's Workers Act.

By Mr. MERKLEY (for himself, Ms. COLLINS, Mr. KENNEDY, Ms. SNOWE, Mr. AKAKA, Mr. BINGAMAN, Mrs. BOXER, Mr. BROWN, Mr. BURRIS, Ms. CANTWELL, Mr. CARDIN, Mr. CASEY, Mr. DODD, Mr. DURBIN, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. FRANKEN, Mrs. GILLIBRAND, Mr. HARKIN, Mr. INOUYE, Mr. KERRY, Ms. KLOBUCHAR, Mr. KOHL, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Mr. LIEBERMAN, Mr. MENENDEZ, Ms. MIKULSKI, Mrs. MURRAY, Mr. REED, Mr. SANDERS, Mr. SCHUMER, Mrs. SHAHEEN, Mr. SPECTER, Mr. UDALL of Colorado, Mr. UDALL of New Mexico, Mr. WHITEHOUSE, and Mr. WYDEN):

S. 1584. A bill to prohibit employment discrimination on the basis of sexual orientation or gender identity; to the Committee on Health, Education, Labor, and Pensions.

Mr. MERKLEY. Mr. President, I rise today to discuss the Employment Non-Discrimination Act, a bill I introduced with Senators SUSAN COLLINS, TED KENNEDY, OLYMPIA SNOWE, and more than 30 others. This historic bill will prohibit employers from discriminating against those employed or seeking employment, on the basis of their perceived or actual sexual orientation or gender identity.

Senator KENNEDY has long been a champion for civil rights, and without his decades of leadership and determination, we would not have the strong coalition of support we exhibit today with the introduction of ENDA.

I would also like to thank the Human Rights Campaign and the Leadership Conference on Civil Rights for their strong commitment to this legislation.

Our country was founded on the principle of equal justice for all. It is that philosophy which has guided us through decades of progress. It is that philosophy which led to passage of the Civil Rights Act of 1964. It was that act which paved the way for countless groundbreaking moments, and I am certain this is one of them.

Passage of the Civil Rights Act was a defining time in our history, the result of generations of people willing to march and struggle for equality. Although we have made progress, we continue that fight today. We continue that fight for those who have, for too long, been left out.

Let me be clear, discrimination on the basis of personal characteristics has no place in any workplace or in any State, and it is long overdue for Congress to extend American employees these protections. Under ENDA, employment decisions will be based upon merit and performance, not prejudice.

This is not a new idea. In fact, many states have already confronted this challenge. I am proud that Oregon has long been a leader on equality issues, and already offers protections to those discriminated against based on both sexual orientation and gender identity. But it was not easy. It is never easy.

Martin Luther King, Jr. said, ''Human progress is neither automatic nor inevitable. Every step toward the goal of justice requires sacrifice, suffering, and struggle; the tireless exertions and passionate concern of dedicated individuals.''

For the first time in history, the Senate has before it a fully inclusive bill, extending employment protections to members of communities that have historically been left out. I am proud to be a part of this historic effort to ensure that no matter who you are, you have the right to earn a living.

Corporate America is light years ahead. More than 85 percent of Fortune 500 companies have implemented nondiscrimination policies that include sexual orientation, and another third have policies that include gender identity.

Unfortunately, we are still faced with cases of employment discrimination that are entirely legal—a fact I find offensive and contradictory to the founding principles of this great nation.

In 2000, Linda, an attorney, relocated to Virginia where her partner had accepted a faculty position at a university. During her job search, Linda was invited for a second interview with a local law firm. During the interview, Linda was asked why she was moving to Virginia, and she replied that her spouse had taken a position at a local university.

The firm asked Linda to come back for a third interview, which included dinner with all the partners and their spouses to ''make sure they all got along.'' At that point, Linda told one of the partners at the firm that her spouse was a woman. It was not long before Linda was told that the firm would not hire a lesbian and the invitation to the final interview was rescinded.

Thankfully, Linda spoke out, but there are still countless instances where victims of this type of discrimination remain silent.

By extending the protection of Title VII to those victimized purely because of who they are, we move one step closer to that fundamental principle of equal justice for every American.

I am proud that we are again taking a step toward progress. I hope my colleagues will move swiftly to pass the Employment Non-Discrimination Act, which will ensure that every American receives equality under the law.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 1584

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Employment Non-Discrimination Act of 2009''.

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to address the history and widespread pattern of discrimination on the basis of sexual orientation or gender identity by private sector employers and local, State, and Federal government employers;

(2) to provide a comprehensive Federal prohibition of employment discrimination on the basis of sexual orientation or gender identity, including meaningful and effective remedies for any such discrimination; and

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

SEC. 3. DEFINITIONS.

(a) IN GENERAL.—In this Act:

(1) COMMISSION.—The term ''Commission'' means the Equal Employment Opportunity Commission.

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

(3) EMPLOYEE.—

(A) IN GENERAL.—The term ''employee'' means—

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

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

(iii) a covered employee, as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. 1301) or section 411(c) of title 3, United States Code; or

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

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

(4) EMPLOYER.—The term ''employer'' means—

(A) a person engaged in an industry affecting commerce (as defined in section 701(h) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(h)) who has 15 or more employees (as defined in subparagraphs (A)(i) and (B) of paragraph (3)) for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but does not include a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986;

(B) an employing authority to which section 302(a)(1) of the Government Employee Rights Act of 1991 applies;

(C) an employing office, as defined in section 101 of the Congressional Accountability Act of 1995 or section 411(c) of title 3, United States Code; or

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

(5) EMPLOYMENT AGENCY.—The term ''employment agency'' has the meaning given the term in section 701(c) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(c)).

(6) GENDER IDENTITY.—The term ''gender identity'' means the gender-related identity, appearance, or mannerisms or other gender-related characteristics of an individual, with or without regard to the individual's designated sex at birth.

(7) 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)).

(8) 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)).

(9) SEXUAL ORIENTATION.—The term ''sexual orientation'' means homosexuality, heterosexuality, or bisexuality.

(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)).

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

(1) to an employee or an employer shall be considered to refer to an employee (as defined in subsection (a)(3)) or an employer (as defined in subsection (a)(4)), respectively, except as provided in paragraph (2) of this subsection; and

(2) to an employer in subsection (f) of that section shall be considered to refer to an employer (as defined in subsection (a)(4)(A)).

SEC. 4. EMPLOYMENT 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 discriminate against any individual with respect to the compensation, terms, conditions, or privileges of employment of the individual, because of such individual's actual or perceived sexual orientation or gender identity; 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 or otherwise adversely affect the status of the individual as an employee, because of such individual's actual or perceived sexual orientation or gender identity.

(b) EMPLOYMENT AGENCY PRACTICES.—It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of the actual or perceived sexual orientation or gender identity of the individual or to classify or refer for employment any individual on the basis of the actual or perceived sexual orientation or gender identity of the individual.

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

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of the actual or perceived sexual orientation or gender identity of the individual;

(2) to limit, segregate, or classify its membership or applicants for membership, or to

classify or fail or refuse to refer for employment any individual, in any way that would deprive or tend to deprive any individual of employment, or would limit such employment or otherwise adversely affect the status of the individual as an employee or as an applicant for employment because of such individual's actual or perceived sexual orientation or gender identity; or

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

(d) TRAINING PROGRAMS.—It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual because of the actual or perceived sexual orientation or gender identity of the individual in admission to, or employment in, any program established to provide apprenticeship or other training.

(e) ASSOCIATION.—An unlawful employment practice described in any of subsections (a) through (d) shall be considered to include an action described in that subsection, taken against an individual based on the actual or perceived sexual orientation or gender identity of a person with whom the individual associates or has associated.

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

(1) any covered entity to grant preferential treatment to any individual or to any group because of the actual or perceived sexual orientation or gender identity of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any actual or perceived sexual orientation or gender identity employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such actual or perceived sexual orientation or gender identity in any community, State, section, or other area, or in the available work force in any community, State, section, or other area; or

(2) the adoption or implementation by a covered entity of a quota on the basis of actual or perceived sexual orientation or gender identity.

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

SEC. 5. RETALIATION PROHIBITED.

It shall be an unlawful employment practice for a covered entity to discriminate against an individual because such individual—

(1) opposed any practice made an unlawful employment practice by this Act; or

(2) made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

SEC. 6. EXEMPTION FOR RELIGIOUS ORGANIZATIONS.

This Act shall not apply to a corporation, association, educational institution or institution of learning, or society that is exempt from the religious discrimination provisions of title VII of the Civil Rights Act of 1964 pursuant (42 U.S.C. 2000e et seq.) to section 702(a) or 703(e)(2) of such Act (42 U.S.C. 2000e–1(a), 2000e–2(e)(2)).

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

(a) ARMED FORCES.—

(1) EMPLOYMENT.—In this Act, the term ''employment'' does not apply to the relationship between the United States and members of the Armed Forces.

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

(b) VETERANS' PREFERENCES.—This title does not repeal or modify any Federal, State, territorial, or local law creating a special right or preference concerning employment for a veteran.

SEC. 8. CONSTRUCTION.

(a) EMPLOYER RULES AND POLICIES.—

(1) IN GENERAL.—Nothing in this Act shall be construed to prohibit a covered entity from enforcing rules and policies that do not intentionally circumvent the purposes of this Act, if the rules or policies are designed for, and uniformly applied to, all individuals regardless of actual or perceived sexual orientation or gender identity.

(2) SEXUAL HARASSMENT.—Nothing in this Act shall be construed to limit a covered entity from taking adverse action against an individual because of a charge of sexual harassment against that individual, provided that rules and policies on sexual harassment, including when adverse action is taken, are designed for, and uniformly applied to, all individuals regardless of actual or perceived sexual orientation or gender identity.

(3) CERTAIN SHARED FACILITIES.—Nothing in this Act shall be construed to establish an unlawful employment practice based on actual or perceived gender identity due to the denial of access to shared shower or dressing facilities in which being seen unclothed is unavoidable, provided that the employer provides reasonable access to adequate facilities that are not inconsistent with the employee's gender identity as established with the employer at the time of employment or upon notification to the employer that the employee has undergone or is undergoing gender transition, whichever is later.

(4) ADDITIONAL FACILITIES NOT REQUIRED.—Nothing in this Act shall be construed to require the construction of new or additional facilities.

(5) DRESS AND GROOMING STANDARDS.—Nothing in this Act shall prohibit an employer from requiring an employee, during the employee's hours at work, to adhere to reasonable dress or grooming standards not prohibited by other provisions of Federal, State, or local law, provided that the employer permits any employee who has undergone gender transition prior to the time of employment, and any employee who has notified the employer that the employee has undergone or is undergoing gender transition after the time of employment, to adhere to the same dress or grooming standards as apply for the gender to which the employee has transitioned or is transitioning.

(b) EMPLOYEE BENEFITS.—Nothing in this Act shall be construed to require a covered entity to treat an unmarried couple in the same manner as the covered entity treats a married couple for purposes of employee benefits.

(c) DEFINITION OF MARRIAGE.—In this Act, the term ''married'' refers to marriage as such term is defined in section 7 of title 1, United States Code (commonly known as the ''Defense of Marriage Act'').

SEC. 9. COLLECTION OF STATISTICS PROHIBITED.

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

SEC. 10. ENFORCEMENT.

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

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

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

(B) sections 302 and 304 of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e–16b and 2000e–16c),

in the case of a claim alleged by such individual for a violation of such title, or of section 302(a)(1) of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e–16b(a)(1)), respectively;

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

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

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

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

(B) sections 302 and 304 of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e–16b and 2000e–16c);

in the case of a claim alleged by such individual for a violation of such title, or of section 302(a)(1) of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e–16b(a)(1)), respectively;

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

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

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

(B) sections 302 and 304 of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e–16b and 2000e–16c) in the case of a claim alleged by such individual for a violation of section 302(a)(1) of such Act (42 U.S.C. 2000e–16b(a)(1));

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

(D) chapter 5 of title 3, United States Code, in the case of a claim alleged by such individual for a violation of section 411 of such title.

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

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

(2) the procedures and remedies applicable for a violation of section 302(a)(1) of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e-16b(a)(1)) in the case of a claim alleged by such individual for a violation of such section;

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

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

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

SEC. 11. STATE AND FEDERAL IMMUNITY.

(a) ABROGATION OF STATE IMMUNITY.—A State shall not be immune under the 11th amendment to the Constitution from a suit brought in a Federal court of competent jurisdiction for a violation of this Act.

(b) WAIVER OF STATE IMMUNITY.—

(1) IN GENERAL.—

(A) WAIVER.—A State's receipt or use of Federal financial assistance for any program or activity of a State shall constitute a waiver of sovereign immunity, under the 11th amendment to the Constitution or otherwise, to a suit brought by an employee or applicant for employment of that program or activity under this Act for a remedy authorized under subsection (d).

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

(2) EFFECTIVE DATE.—With respect to a particular program or activity, paragraph (1) applies to conduct occurring on or after the day, after the date of enactment of this Act, on which a State first receives or uses Federal financial assistance for that program or activity.

(c) REMEDIES AGAINST STATE OFFICIALS.—An official of a State may be sued in the official capacity of the official by any employee or applicant for employment who has complied with the applicable procedures of section 10, for equitable relief that is authorized under this Act. In such a suit the court may award to the prevailing party those costs authorized by section 722 of the Revised Statutes (42 U.S.C. 1988).

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

(1) punitive damages are not available; and

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

SEC. 12. ATTORNEYS' FEES.

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

SEC. 13. POSTING NOTICES.

A covered entity who is required to post notices described in section 711 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–10) shall post notices for employees, applicants for employment, and members, to whom the provisions specified in section 10(b) apply, that describe the applicable provisions of this Act in the manner prescribed by, and subject to the penalty provided under, section 711 of the Civil Rights Act of 1964.

SEC. 14. REGULATIONS.

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

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

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

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

SEC. 15. RELATIONSHIP TO OTHER LAWS.

This Act shall not invalidate or limit the rights, remedies, or procedures available to an individual claiming discrimination prohibited under any other Federal law or regulation or any law or regulation of a State or political subdivision of a State.

SEC. 16. SEVERABILITY.

If any provision of this Act, or the application of the provision to any person or circumstance, is held to be invalid, the remainder of this Act and the application of the provision to any other person or circumstances shall not be affected by the invalidity.

SEC. 17. EFFECTIVE DATE.

This Act shall take effect on the date that is 6 months after the date of enactment of this Act and shall not apply to conduct occurring before the effective date.

Mr. KENNEDY. Mr. President, the promise of America will never be fulfilled as long as justice is denied to any of our fellow citizens. We have made remarkable progress in the long march towards equal opportunity and equal justice for all Americans, but this is no time for complacency. Civil rights remains the unfinished business of America. Millions of our people are still shut out of the American dream solely because of their sexual orientation or gender identity. The Employment Non-Discrimination Act brings us closer to fulfilling the promise of America for gay, lesbian, bisexual, and transgender citizens, and I am proud to join Senators MERKLEY, COLLINS, and SNOWE today in introducing this important legislation.

ENDA reflects the bedrock American principle that employees should be judged on the basis of job performance, not prejudice. It prohibits employers from making decisions about hiring, firing, promotions, or compensation based on sexual orientation or gender identity. It makes clear that there is no right to preferential treatment, and that quotas are prohibited.

While some states have taken this important step to guarantee fair treatment in the workplace, ENDA is necessary to guarantee these rights for all. It is unacceptable that in our country in 2009, it is legal anywhere to judge people on who they are, not what they can accomplish. This legislation will right this historic wrong.

ENDA has broad, bipartisan support. It reflects non-discrimination principles already in place at some our country's largest employers. In the past, this legislation has been endorsed by a broad religious coalition, civil rights leaders, and distinguished Americans from both parties.

I am proud to join my colleagues today in bringing us one step closer to our ideal of a nation free from prejudice and injustice. I look forward to doing all I can to pass this important legislation, and I urge my colleagues to support us.

Mr. LEAHY. Mr. President, our Nation has a proud history of diversity and a commitment to justice and equal rights for all Americans. The promise of equal rights is a foundational freedom of our democracy. Today we re-introduce important legislation to protect Americans from discrimination in the workplace. I am proud to again cosponsor the bipartisan Employment Non-Discrimination Act, and I thank Senators KENNEDY, COLLINS, and MERKLEY for their leadership and commitment to an issue that has practical significance in the daily lives of millions of our fellow Americans.

American workers should be evaluated on the basis of how they perform, not on irrelevant considerations, such as their race, gender, gender identity or sexual orientation. It is a question of fundamental fairness. In these difficult economic times, I can think of nothing more fundamental than equality in the workplace.

The Employment Non-Discrimination Act would prohibit workplace discrimination by making it illegal to fire, refuse to hire, or refuse to promote employees simply based on a person's sexual orientation or gender identity. Currently, Federal law protects against employment discrimination on the basis of race, gender, religion, national origin or disability, but not sexual orientation or gender identity. It is long overdue for Congress to extend these protections to American workers.

Senator KENNEDY introduced the Employment Non-Discrimination Act in previous sessions of Congress, and with his leadership, it has consistently maintained strong bipartisan support. Unfortunately, partisan politics have prevented passage of the measure. It goes against our country's basic values to fire someone based on who they are or what they look like, and we should not tolerate discrimination in the workplace. I hope that this year Congress will have the ability to finally

pass this straightforward civil rights measure.

My home State of Vermont has played a constructive role in America's journey to build a more just society. Vermont added sexual orientation to the list of protected categories in its antidiscrimination in employment law in 1992, and added gender identity protection in 2007. Twenty-one other States have also taken the lead to ban discrimination on the basis of sexual orientation, with 13 of those States also banning discrimination on the basis of gender identity. But it is clear that more still deeds to be done. In 30 States, it remains legal to fire someone based on their sexual orientation and in 38 States, to do so based on gender identity. Americans' civil rights should be protected no matter where they live, which is why I am proud to once again cosponsor this bill, as I have every time it has been introduced in the Senate. I believe the passage of this legislation is long overdue and it is a step in the right direction toward creating equality in the workplace.

I urge my fellow Senators to come together to support this important, bipartisan bill without further delay.

By Mr. DURBIN:

S. 1585. A bill to permit pass-through payment for reasonable costs of certified registered nurse anesthetist services in critical access hospitals notwithstanding the reclassification of such hospitals as urban hospitals, including hospitals located in ''Lugar counties'', and for on-call and standby costs for such services; to the Committee on Finance.

Mr. DURBIN. Mr. President, today I'm introducing the Rural Access to Nurse Anesthesia Services Act to ensure patients in rural communities can access the health care services they need. The bill would restore rural healthcare by making improvements to the Medicare Part A reasonable cost-based, pass-through program for nurse anesthesia services in rural and critical access hospitals.

Throughout the Nation, 1,300 critical access hospitals provide essential health care services to the elderly and medically underserved communities in rural areas. In my State of Illinois, 51 Critical Access Hospitals provide emergency, primary care, and surgery services directly to rural communities, covering over 60 percent of the counties in the State and reaching over 1 million rural residents.

For the majority of Critical Access Hospitals, Certified Registered Nurse Anesthetists are the sole providers of anesthesia services. The nurse anesthetists make it possible for these hospitals to offer surgical, obstetrical, trauma stabilization, interventional diagnostic and pain management capabilities.

Critical Access Hospitals depend on the work of nurse anesthetists to deliver quality care, even while the hospitals are pressed for resources. Because of the limited availability of nurse anesthetists and fewer patients in their rural communities, Critical Access Hospitals do not have anesthesia in the hospital 24/7. They rely on anesthesia and other surgery staff to be on call and available to the hospital within 15 minutes to cover emergency surgery procedures and obstetric services.

As an incentive to continue serving Medicare beneficiaries in rural areas, critical access hospitals were given permission to use reasonable, cost-based funding for anesthesia services performed by nurse anesthetists. However, recent changes in CMS policy have denied Critical Access Hospitals' claims for tens of thousands of dollars each in annual Medicare funding that they had come to rely on. In Illinois, Critical Access Hospitals lost $50,000–$100,000 per hospital.

These hospitals aren't just looking for a handout. Without being able to pay nurse anesthetists, the rural hospitals have to turn away patients whose procedures call for anesthesia. Patients have to travel to the next nearest hospital, which is a terrible option when dealing with trauma stabilization, obstetrical care, or even pain management, particularly for elderly patients.

In addition, despite previously reimbursing Critical Access Hospitals for the costs of having a nurse anesthetist available or on call for emergency services, CMS recently began to deny payments for this service. How is a hospital able to retain the few nurse anesthetists who are available if they can't at least keep them on call?

The Rural Access to Nurse Anesthesia Services Act will enable hospitals to offer the highest quality of care and availability of services to patients of Critical Access Hospitals. For decades, the Medicare Part A reasonable cost based pass-through program has successfully and safely ensured the availability of anesthesia services for Medicare patients in rural areas. Because of the program's success and impact, the Rural Access to Nurse Anesthesia Services Act is supported by the American Association of Nurse Anesthetists and the American Hospital Association. I hope my colleagues will join me in supporting this bill and work to protect anesthesia services for patients in rural communities.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 1585

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. MEDICARE PASS-THROUGH PAYMENTS FOR CRNA SERVICES.

(a) TREATMENT OF CRITICAL ACCESS HOSPITALS AS RURAL IN DETERMINING ELIGIBILITY FOR CRNA PASS-THROUGH PAYMENTS.—Section 9320(k) of the Omnibus Budget Reconciliation Act of 1986 (42 U.S.C. 1395k note), as added by section 608(c)(2) of the Family Support Act of 1988 and amended by section 6132 of the Omnibus Budget Reconciliation Act of 1989, is amended by adding at the end the following:

''(3) Any facility that qualifies as a critical access hospital (as defined in section 1861(mm)(1) of the Social Security Act) shall be treated as being located in a rural area for purposes of paragraph (1) regardless of any geographic reclassification of the facility, including such a reclassification of the county in which the facility is located as an urban county (also popularly known as a Lugar county) under section 1886(d)(8)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(8)(B)).''.

(b) TREATMENT OF STANDBY AND ON-CALL COSTS.—Such section 9320(k), as amended by subsection (a), is further amended by adding at the end the following:

''(4) In determining the reasonable costs incurred by a hospital or critical access hospital for the services of a certified registered nurse anesthetist under this subsection, the Secretary shall include standby costs and on-call costs incurred by the hospital or critical access hospital, respectively, with respect to such nurse anesthetist.''.

(c) EFFECTIVE DATES.—

(1) TREATMENT OF CAHS AS RURAL IN DETERMINING CRNA PASS-THROUGH ELIGIBILITY.—The amendment made by subsection (a) shall apply to calendar years beginning on or after the date of the enactment of this Act (regardless of whether the geographic reclassification of a critical access hospital occurred before, on, or after such date).

(2) INCLUSION OF STANDBY COSTS AND ON-CALL COSTS IN DETERMINING REASONABLE COSTS OF CRNA SERVICES.—The amendment made by subsection (b) shall apply to costs incurred in cost reporting periods beginning in fiscal years after fiscal year 2003.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 241—DESIGNATING THE PERIOD BEGINNING ON SEPTEMBER 13, 2009, AND ENDING ON SEPTEMBER 19, 2009, AS ''NATIONAL POLYCYSTIC KIDNEY DISEASE AWARENESS WEEK'', AND SUPPORTING THE GOALS AND IDEALS OF A NATIONAL POLYCYSTIC KIDNEY DISEASE AWARENESS WEEK TO RAISE PUBLIC AWARENESS AND UNDERSTANDING OF POLYCYSTIC KIDNEY DISEASE AND THE IMPACT POLYCYSTIC KIDNEY DISEASE HAS ON PATIENTS AND FUTURE GENERATIONS OF THEIR FAMILIES

Mr. KOHL (for himself and Mr. HATCH) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 241

Whereas polycystic kidney disease, known as ''PKD'', is 1 of the most prevalent life-threatening genetic diseases in the United States;

Whereas polycystic kidney disease is a severe, dominantly inherited disease that has a devastating impact, in both human and economic terms, affecting equally people of all ages, races, sexes, nationalities, geographic locations, and income levels;

Whereas there are 2 hereditary forms of polycystic kidney disease, with autosomal dominant polycystic kidney disease