

103D CONGRESS
2D SESSION

H. R. 4636

To prohibit employment discrimination on the basis of sexual orientation.

IN THE HOUSE OF REPRESENTATIVES

JUNE 23, 1994

Mr. STUDDS (for himself, Mr. FRANK of Massachusetts, Mr. WAXMAN, Mr. EDWARDS of California, Mr. ABERCROMBIE, Mr. ACKERMAN, Mr. ANDREWS of Maine, Mr. BACCHUS of Florida, Mr. BECERRA, Mr. BEILEN-SON, Mr. BERMAN, Mr. BLACKWELL, Mr. BONIOR, Ms. CANTWELL, Mr. CARDIN, Mr. CLAY, Mrs. CLAYTON, Miss COLLINS of Michigan, Mr. CON-YERS, Mr. COPPERSMITH, Mr. DEFazio, Ms. DELAURO, Mr. DELLUMS, Mr. DERRICK, Mr. DEUTSCH, Mr. DIXON, Mr. ENGEL, Ms. ENGLISH of Arizona, Ms. ESHOO, Mr. EVANS, Mr. FARR of California, Mr. FAZIO, Mr. FILNER, Mr. FLAKE, Mr. FOGLIETTA, Mr. FORD of Michigan, Ms. FURSE, Mr. GEJDENSON, Mr. GONZALEZ, Mr. GUTIERREZ, Mr. HAM-BURG, Ms. HARMAN, Mr. HASTINGS, Mr. HINCHEY, Mr. HOCHBRUECKNER, Mr. HOYER, Mr. HUFFINGTON, Mr. JEFFERSON, Mr. JOHNSTON of Florida, Mr. KENNEDY, Mr. KOPETSKI, Mr. KREIDLER, Mr. LANTOS, Mr. LEWIS of Georgia, Mrs. LOWEY, Mr. MACHTLEY, Mrs. MALONEY, Ms. MARGOLIES-MEZVINSKY, Mr. MARKEY, Mr. MARTINEZ, Mr. MATSUI, Mr. McDERMOTT, Ms. McKINNEY, Mr. MEEHAN, Mrs. MEEK, Mr. MENENDEZ, Mr. MFUME, Mr. MILLER of California, Mr. Mi-NETA, Mrs. MINK, Mr. MORAN, Mrs. MORELLA, Mr. NADLER, Ms. NOR-TON, Mr. OLVER, Mr. OWENS, Mr. PALLONE, Mr. PASTOR, Mr. PAYNE of New Jersey, Ms. PELOSI, Mr. RANGEL, Mr. REED, Mr. REYNOLDS, Ms. ROYBAL-ALLARD, Mr. RUSH, Mr. SABO, Mr. SANDERS, Ms. SCHENK, Mrs. SCHROEDER, Mr. SCHUMER, Mr. SERRANO, Mr. SHAYS, Mr. SKAGGS, Ms. SLAUGHTER, Mr. STARK, Mr. STOKES, Mr. TORRICELLI, Mr. TOWNS, Mr. UNDERWOOD, Mrs. UNSOELD, Ms. VELÁZQUEZ, Mr. VENTO, Mr. WASHINGTON, Ms. WATERS, Mr. WATT, Ms. WOOLSEY, Mr. WYDEN, Mr. WYNN, and Mr. YATES) introduced the following bill; which was referred to the Committee on Education and Labor

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 1994”.

6 **SEC. 2. DISCRIMINATION PROHIBITED.**

7 A covered entity, in connection with employment or
8 employment opportunities, shall not—

9 (1) subject an individual to different standards
10 or treatment on the basis of sexual orientation;

11 (2) discriminate against an individual based on
12 the sexual orientation of persons with whom such in-
13 dividual is believed to associate or to have associ-
14 ated; or

15 (3) otherwise discriminate against an individual
16 on the basis of sexual orientation.

17 **SEC. 3. BENEFITS.**

18 This Act does not apply to the provision of employee
19 benefits to an individual for the benefit of his or her
20 partner.

1 **SEC. 4. NO DISPARATE IMPACT.**

2 The fact that an employment practice has a disparate
3 impact, as the term “disparate impact” is used in section
4 703(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–
5 2(k)), on the basis of sexual orientation does not establish
6 a prima facie violation of this Act.

7 **SEC. 5. QUOTAS AND PREFERENTIAL TREATMENT PROHIB-**
8 **ITED.**

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

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

14 **SEC. 6. RELIGIOUS EXEMPTION.**

15 (a) IN GENERAL.—Except as provided in subsection
16 (b), this Act shall not apply to religious organizations.

17 (b) FOR-PROFIT ACTIVITIES.—This Act shall apply
18 to a religious organization’s for-profit activities subject to
19 taxation under section 511(a) of the Internal Revenue
20 Code of 1986 as in effect on the date of the enactment
21 of this Act.

22 **SEC. 7. NONAPPLICATION TO MEMBERS OF THE ARMED**
23 **FORCES; VETERANS’ PREFERENCES.**

24 (a) ARMED FORCES.—(1) For purposes of this Act,
25 the term “employment or employment opportunities” does

1 not apply to the relationship between the United States
2 and members of the Armed Forces.

3 (2) As used in paragraph (1), the term “Armed
4 Forces” means the Army, Navy, Air Force, Marine Corps,
5 and Coast Guard.

6 (b) VETERANS’ PREFERENCES.—This Act does not
7 repeal or modify any Federal, State, territorial, or local
8 law creating special rights or preferences for veterans.

9 **SEC. 8. ENFORCEMENT.**

10 (a) ENFORCEMENT POWERS.—With respect to the
11 administration and enforcement of this Act—

12 (1) the Commission and the Librarian of Con-
13 gress shall have the same powers, respectively, as
14 the Commission and the Librarian of Congress have
15 to administer and enforce title VII of the Civil
16 Rights Act of 1964 (42 U.S.C. 2000e et seq.);

17 (2) the Attorney General of the United States
18 shall have the same powers as the Attorney General
19 has to administer and enforce such title; and

20 (3) the district courts of the United States shall
21 have the same jurisdiction and powers as such
22 courts have to enforce such title and section 309 of
23 the Civil Rights Act of 1991 (2 U.S.C. 1209).

1 (b) PROCEDURES AND REMEDIES.—The procedures
2 and remedies applicable to a claim for a violation of this
3 Act are as follows:

4 (1) For a violation alleged by an individual,
5 other than an individual specified in paragraph (2)
6 or (3), the procedures and remedies applicable to a
7 claim brought by an individual for a violation of title
8 VII of the Civil Rights Act of 1964 (42 U.S.C.
9 2000e et seq.) shall apply.

10 (2) For a violation alleged by an employee of
11 the House of Representatives or of an instrumental-
12 ity of the Congress, the procedures and remedies ap-
13 plicable to a claim by such employee for a violation
14 of section 117 of the Civil Rights Act of 1991 (2
15 U.S.C. 60l) shall apply.

16 (3) For a violation alleged by a Senate em-
17 ployee, the procedures and remedies applicable to a
18 claim by such employee for a violation of section 302
19 of the Civil Rights Act of 1991 (2 U.S.C. 1202)
20 shall apply.

21 **SEC. 9. STATE AND FEDERAL IMMUNITY.**

22 (a) STATE IMMUNITY.—A State shall not be immune
23 under the eleventh article of amendment to the Constitu-
24 tion of the United States from an action in a Federal court
25 of competent jurisdiction for a violation of this Act. In

1 an action against a State for a violation of this Act, rem-
2 edies (including remedies at law and in equity) are avail-
3 able for the violation to the same extent as such remedies
4 are available in an action against any public or private
5 entity other than a State.

6 (b) LIABILITY OF THE UNITED STATES.—The
7 United States shall be liable for all remedies under this
8 Act to the same extent as a private person and shall be
9 liable to the same extent as a nonpublic party for interest
10 to compensate for delay in payment.

11 **SEC. 10. ATTORNEYS' FEES.**

12 In any action or administrative proceeding com-
13 menced pursuant to this Act, the court or the Commission,
14 in its discretion, may allow the prevailing party, other
15 than the United States, a reasonable attorney's fee, in-
16 cluding expert fees and other litigation expenses, and
17 costs. The United States shall be liable for the foregoing
18 the same as a private person.

19 **SEC. 11. RETALIATION AND COERCION PROHIBITED.**

20 (a) RETALIATION.—A covered entity shall not dis-
21 criminate against an individual because such individual
22 opposed any act or practice prohibited by this Act or be-
23 cause such individual made a charge, assisted, testified,
24 or participated in any manner in an investigation, proceed-
25 ing, or hearing under this Act.

1 (b) COERCION.—A person shall not coerce, intimi-
2 date, threaten, or interfere with any individual in the exer-
3 cise or enjoyment of, or on account of his or her having
4 exercised, enjoyed, assisted, or encouraged the exercise or
5 enjoyment of, any right granted or protected by this Act.

6 **SEC. 12. POSTING NOTICES.**

7 A covered entity shall post notices for employees, ap-
8 plicants for employment, and members describing the ap-
9 plicable 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 (42 U.S.C. 2000e–10).

12 **SEC. 13. REGULATIONS.**

13 The Commission shall have authority to issue regula-
14 tions to carry out this Act.

15 **SEC. 14. RELATIONSHIP TO OTHER LAWS.**

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

20 **SEC. 15. SEVERABILITY.**

21 If any provision of this Act, or the application of such
22 provision to any person or circumstance, is held to be in-
23 valid, the remainder of this Act and the application of such
24 provision to other persons or circumstances shall not be
25 affected thereby.

1 **SEC. 16. EFFECTIVE DATE.**

2 This Act shall take effect 60 days after the date of
3 the enactment of this Act and shall not apply to conduct
4 occurring before such effective date.

5 **SEC. 17. DEFINITIONS.**

6 As used in this Act:

7 (1) The term “Commission” means the Equal
8 Employment Opportunity Commission.

9 (2) The term “covered entity” means an em-
10 ployer, employment agency, labor organization, joint
11 labor management committee, an entity to which
12 section 717(a) of the Civil Rights Act of 1964 (42
13 U.S.C. 2000e(a)) applies, an employing authority of
14 the House of Representatives, an employing office of
15 the Senate, or an instrumentality of the Congress.

16 (3) The term “employer” has the meaning
17 given such term in section 701(b) of the Civil Rights
18 Act of 1964 (42 U.S.C. 2000e(b)).

19 (4) The term “employment agency” has the
20 meaning given such term in section 701(c) of the
21 Civil Rights Act of 1964 (42 U.S.C. 2000e(c)).

22 (5) The term “employment or employment op-
23 portunities” includes job application procedures, hir-
24 ing, advancement, discharge, compensation, job
25 training, or any other term, condition, or privilege of
26 employment.

1 (6) The term “instrumentalities of the Con-
2 gress” has the meaning given such term in section
3 117(b)(4) of the Civil Rights Act of 1991 (2 U.S.C.
4 601(b)(4)).

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

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

11 (9) The term “religious organization” means—

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

14 (B) a college, school, university, or other
15 educational institution, not otherwise a religious
16 organization, if—

17 (i) it is in whole or substantial part
18 controlled, managed, owned, or supported
19 by a religious corporation, association, or
20 society; or

21 (ii) its curriculum is directed toward
22 the propagation of a particular religion.

23 (10) The term “Senate employee” has the
24 meaning given such term in section 301(c) of the
25 Civil Rights Act of 1991 (2 U.S.C. 1201(c)).

1 (11) The term “sexual orientation” means les-
2 bian, gay, bisexual, or heterosexual orientation, real
3 or perceived, as manifested by identity, acts, state-
4 ments, or associations.

5 (12) The term “State” has the meaning given
6 such term in section 701(i) of the Civil Rights Act
7 of 1964 (42 U.S.C. 2000e(i)).

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