

104TH CONGRESS
1ST SESSION

H. R. 1863

To prohibit employment discrimination on the basis of sexual orientation.

IN THE HOUSE OF REPRESENTATIVES

JUNE 15, 1995

Mr. STUDDS (for himself, Mr. FRANK of Massachusetts, Mrs. MORELLA, Mr. TORKILDSEN, Mr. ABERCROMBIE, Mr. ACKERMAN, Mr. BOEHLERT, Mr. FLANAGAN, Mr. BALDACCI, Mr. BARRETT of Wisconsin, Mr. GILMAN, Mr. GUNDERSON, Mr. BECERRA, Mr. BEILENSEN, Mr. HORN, Mrs. JOHNSON of Connecticut, Mr. BERMAN, Mr. BONIOR, Mrs. KELLY, Mr. SHAYS, Mr. BROWN of California, Mr. CARDIN, Mr. CLAY, Mrs. CLAYTON, Mr. CLYBURN, Mr. COLEMAN, Miss COLLINS of Michigan, Mr. CONYERS, Mr. COYNE, Mr. DEFAZIO, Ms. DELAURO, Mr. DELLUMS, Mr. DEUTSCH, Mr. DICKS, Mr. DIXON, Mr. DURBIN, Mr. ENGEL, Ms. ESHOO, Mr. EVANS, Mr. FALEOMAVAEGA, Mr. FARR, Mr. FAZIO of California, Mr. FILNER, Mr. FLAKE, Mr. FOGLIETTA, Ms. FURSE, Mr. GEJDENSON, Mr. GONZALEZ, Mr. GUTIERREZ, Ms. HARMAN, Mr. HASTINGS of Florida, Mr. HINCHEY, Mr. HOYER, Ms. JACKSON-LEE, Mr. JEFFERSON, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. KENNEDY of Massachusetts, Mr. KENNEDY of Rhode Island, Mrs. KENNELLY, Mr. KILDEE, Mr. LANTOS, Mr. LEVIN, Mr. LEWIS of Georgia, Ms. LOFGREN, Mrs. LOWEY, Mrs. MALONEY, Mr. MARKEY, Mr. MARTINEZ, Mr. MATSUI, Ms. MCCARTHY, Mr. MCDERMOTT, Ms. MCKINNEY, Mr. MEEHAN, Mrs. MEEK of Florida, Mr. MENENDEZ, Mr. MFUME, Mr. MILLER of California, Mr. MINETA, Mrs. MINK of Hawaii, Mr. MORAN, Mr. MOAKLEY, Mr. NADLER, Mr. NEAL of Massachusetts, Ms. NORTON, Mr. OLVER, Mr. OWENS, Mr. PALLONE, Mr. PASTOR, Mr. PAYNE of New Jersey, Ms. PELOSI, Mr. RANGEL, Mr. REED, Mr. REYNOLDS, Mr. RICHARDSON, Ms. RIVERS, Ms. ROYBAL-ALLARD, Mr. RUSH, Mr. SABO, Mr. SANDERS, Mr. SAWYER, Mrs. SCHROEDER, Mr. SCHUMER, Mr. SERRANO, Ms. SLAUGHTER, Mr. STARK, Mr. THOMPSON, Mr. TORRES, Mr. TORRICELLI, Mr. TOWNS, Mr. TRAFICANT, Mr. UNDERWOOD, Ms. VELÁZQUEZ, Ms. WATERS, Mr. WATT of North Carolina, Mr. WAXMAN, Ms. WOOLSEY, Mr. WYDEN, Mr. WYNN, and Mr. YATES) introduced the following bill; which was referred to the Committee on Economic and Educational Opportunities, and in addition to the Committees on House Oversight, Government Reform and Oversight, and the Judiciary, for a period to be subsequently

determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To prohibit employment discrimination on the basis of sexual orientation.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Employment Non-Dis-
5 crimination Act of 1995”.

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.

1 **SEC. 3. BENEFITS.**

2 This Act does not apply to the provision of employee
3 benefits to an individual for the benefit of his or her part-
4 ner.

5 **SEC. 4. NO DISPARATE IMPACT.**

6 The fact that an employment practice has a disparate
7 impact, as the term “disparate impact” is used in section
8 703(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-
9 2(k)), on the basis of sexual orientation does not establish
10 a prima facie violation of this Act.

11 **SEC. 5. QUOTAS AND PREFERENTIAL TREATMENT PROHIB-**
12 **ITED.**

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

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

18 **SEC. 6. RELIGIOUS EXEMPTION.**

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

21 (b) FOR-PROFIT ACTIVITIES.—This Act shall apply
22 with respect to employment and employment opportunities
23 that relate to any employment position that pertains solely
24 to a religious organization’s for-profit activities subject to
25 taxation under section 511(a) of the Internal Revenue
26 Code of 1986.

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

3 (a) ARMED FORCES.—(1) For purposes of this Act,
4 the term “employment or employment opportunities” does
5 not apply to the relationship between the United States
6 and members of the Armed Forces.

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

10 (b) VETERANS' PREFERENCES.—This Act does not
11 repeal or modify any Federal, State, territorial, or local
12 law creating special rights or preferences for veterans.

13 **SEC. 8. ENFORCEMENT.**

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

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

20 (A) title VII of the Civil Rights Act of
21 1964 (42 U.S.C. 2000e et seq.), or

22 (B) sections 302, 303, and 304 of the Gov-
23 ernment Employee Rights Act of 1991 (2
24 U.S.C. 1202, 1203, 1204),

1 in the case of a claim alleged by such individual for
2 a violation of such title or of section 302(a)(1) of
3 such Act, respectively,

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

10 (3) the Board (as defined in section 101 of the
11 Congressional Accountability Act of 1995 (Public
12 Law 104–1; 109 Stat. 3) shall have the same powers
13 as the Board has to administer and enforce the Con-
14 gressional Accountability Act of 1995 in the case of
15 a claim alleged by such individual for a violation of
16 section 201(a)(1) of such Act,

17 (4) the Attorney General of the United States
18 shall have the same powers as the Attorney General
19 has to administer and enforce—

20 (A) title VII of the Civil Rights Act of
21 1964 (42 U.S.C. 2000e et seq.), or

22 (B) sections 302, 303, and 304 of the Gov-
23 ernment Employee Rights Act of 1991 (2
24 U.S.C. 1202, 1203, 1204),

1 in the case of a claim alleged by such individual for
2 a violation of such title or of section 302(a)(1) of
3 such Act, respectively, and

4 (5) the courts of the United States shall have
5 the same jurisdiction and powers as such courts
6 have to enforce—

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

11 (B) sections 302, 303, and 304 of the Gov-
12 ernment Employee Rights Act of 1991 (2
13 U.S.C. 1202, 1203, 1204) in the case of a
14 claim alleged by such individual for a violation
15 of section 302(a)(1) of such Act, and

16 (C) the Congressional Accountability Act
17 of 1995 (Public Law 104-1; 109 Stat. 3) in the
18 case of a claim alleged by such individual for a
19 violation of section 201(a)(1) of such Act.

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

23 (1) the procedures and remedies applicable for
24 a violation of title VII of the Civil Rights Act of
25 1964 (42 U.S.C. 2000e et seq.) in the case of a

1 claim alleged by such individual for a violation of
2 such title,

3 (2) the procedures and remedies applicable for
4 a violation of section 302(a)(1) of the Government
5 Employee Rights Act of 1991 (2 U.S.C. 1202(a)(1))
6 in the case of a claim alleged by such individual for
7 a violation of such section, and

8 (3) the procedures and remedies applicable for
9 a violation of section 201(a)(1) of Congressional Ac-
10 countability Act of 1995 (Public Law 104–1; 109
11 Stat. 3) in the case of a claim alleged by such indi-
12 vidual for a violation of such section.

13 (c) OTHER APPLICABLE PROVISIONS.—With respect
14 to claims alleged by covered employees (as defined in sec-
15 tion 101 of the Congressional Accountability Act of 1995
16 (Public Law 104–1; 109 Stat. 3)) for violations of this
17 Act, title III of the Congressional Accountability Act of
18 1995 shall apply in the same manner as such title applies
19 with respect to a claims alleged by such covered employees
20 for violations of section 201(a)(1) of such Act.

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 (excluding
8 punitive damages) under this Act to the same extent as
9 a private person and shall be liable to the same extent
10 as a nonpublic party for interest to compensate for delay
11 in payment.

12 **SEC. 10. ATTORNEYS' FEES.**

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

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

21 (a) RETALIATION.—A covered entity shall not dis-
22 criminate against an individual because such individual
23 opposed any act or practice prohibited by this Act or be-
24 cause such individual made a charge, assisted, testified,

1 or participated in any manner in an investigation, proceed-
2 ing, or hearing under this Act.

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

8 **SEC. 12. POSTING NOTICES.**

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

14 **SEC. 13. REGULATIONS.**

15 The Commission shall have authority to issue regula-
16 tions to carry out this Act.

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

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

22 **SEC. 15. SEVERABILITY.**

23 If any provision of this Act, or the application of such
24 provision to any person or circumstance, is held to be in-
25 valid, the remainder of this Act and the application of such

1 provision to other persons or circumstances shall not be
2 affected thereby.

3 **SEC. 16. EFFECTIVE DATE.**

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

7 **SEC. 17. DEFINITIONS.**

8 As used in this Act:

9 (1) The term “Commission” means the Equal
10 Employment Opportunity Commission.

11 (2) The term “covered entity” means an em-
12 ployer, employment agency, labor organization, joint
13 labor management committee, an entity to which
14 section 717(a) of the Civil Rights Act of 1964 (42
15 U.S.C. 2000e(a)) applies, an employing authority to
16 which section 302(a)(1) of the Government Em-
17 ployee Rights Act of 1991 (2 U.S.C. 1202(a)(1)) ap-
18 plies, or an employing authority to which section
19 201(a) of the Congressional Accountability Act of
20 1995 (Public Law 104–1; 109 Stat. 3) applies.

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

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

4 (5) The term “employment or employment op-
5 portunities” includes job application procedures, hir-
6 ing, advancement, discharge, compensation, job
7 training, or any other term, condition, or privilege of
8 employment.

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

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

15 (8) The term “religious organization” means—

16 (A) a religious corporation, association, or
17 society, or

18 (B) a college, school, university, or other
19 educational institution, not otherwise a religious
20 organization, if—

21 (i) it is in whole or substantial part
22 controlled, managed, owned, or supported
23 by a religious corporation, association, or
24 society, or

1 (ii) its curriculum is directed toward
2 the propagation of a particular religion.

3 (9) The term “sexual orientation” means homo-
4 sexuality, bisexuality, or heterosexuality, whether
5 such orientation is real or perceived.

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

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