

Calendar No. 763107TH CONGRESS
2^D SESSION**S. 1284****[Report No. 107-341]**

To prohibit employment discrimination on the basis of sexual orientation.

IN THE SENATE OF THE UNITED STATES

JULY 31, 2001

Mr. KENNEDY (for himself, Mr. SPECTER, Mr. JEFFORDS, Mr. LIEBERMAN, Mr. DASCHLE, Mr. AKAKA, Mr. BAUCUS, Mr. BAYH, Mr. BIDEN, Mr. BINGAMAN, Mrs. BOXER, Ms. CANTWELL, Mr. CARPER, Mr. CHAFEE, Mr. CLELAND, Mrs. CLINTON, Mr. CORZINE, Mr. DAYTON, Mr. DODD, Mr. DURBIN, Mr. EDWARDS, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. HARKIN, Mr. INOUE, Mr. KERRY, Mr. KOHL, Ms. LANDRIEU, Mr. LEAHY, Mr. LEVIN, Ms. MIKULSKI, Mrs. MURRAY, Mr. NELSON of Florida, Mr. REED, Mr. REID, Mr. SARBANES, Mr. SCHUMER, Mr. SMITH of Oregon, Ms. STABENOW, Mr. TORRICELLI, Mr. WELLSTONE, Mr. WYDEN, Mrs. CARNAHAN, Mr. BREAUX, and Ms. COLLINS) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

NOVEMBER 15, 2002

Reported by Mr. KENNEDY, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italie*]

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 ermination Act of 2001”.

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;

11 (2) to provide meaningful and effective rem-
12 edies for employment discrimination on the basis of
13 sexual orientation; and

14 (3) to invoke congressional powers, including
15 the powers to enforce the 14th amendment to the
16 Constitution, and to regulate interstate commerce
17 and provide for the general welfare pursuant to sec-
18 tion 8 of article I of the Constitution, in order to
19 prohibit employment discrimination on the basis of
20 sexual orientation.

21 **SEC. 3. DEFINITIONS.**

22 In this Act:

23 (1) **COMMISSION.**—The term “Commission”
24 means the Equal Employment Opportunity Commis-
25 sion.

1 (2) COVERED ENTITY.—The term “covered en-
2 tity” means an employer, employment agency, labor
3 organization, or joint labor-management committee.

4 (3) EMPLOYEE.—

5 (A) IN GENERAL.—The term “employee”
6 means—

7 (i) an employee (as defined in section
8 701(f) of the Civil Rights Act of 1964 (42
9 U.S.C. 2000e(f));

10 (ii) a Presidential appointee or State
11 employee to which section 302(a)(1) of the
12 Government Employee Rights Act of 1991
13 (2 U.S.C. 1202(a)(1)) applies;

14 (iii) a covered employee, as defined in
15 section 101 of the Congressional Account-
16 ability Act of 1995 (2 U.S.C. 1301) or sec-
17 tion 411(e) of title 3, United States Code;
18 or

19 (iv) an employee or applicant to which
20 section 717(a) of the Civil Rights Act of
21 1964 (42 U.S.C. 2000e-16(a)) applies.

22 (B) EXCEPTION.—The term does not in-
23 clude a volunteer who receives no compensation.

24 (4) EMPLOYER.—The term “employer”
25 means—

1 (A) a person engaged in an industry affect-
2 ing commerce (as defined in section 701(h) of
3 the Civil Rights Act of 1964 (42 U.S.C.
4 2000e(h)) who has 15 or more employees (as
5 defined in subparagraphs (A)(i) and (B) of
6 paragraph (3)) for each working day in each of
7 20 or more calendar weeks in the current or
8 preceding calendar year, and any agent of such
9 a person, but does not include a bona fide pri-
10 vate membership club (other than a labor orga-
11 nization) that is exempt from taxation under
12 section 501(c) of the Internal Revenue Code of
13 1986;

14 (B) an employing authority to which sec-
15 tion 302(a)(1) of the Government Employee
16 Rights Act of 1991 applies;

17 (C) an employing office, as defined in sec-
18 tion 101 of the Congressional Accountability
19 Act of 1995 or section 411(e) of title 3, United
20 States Code; or

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

23 (5) EMPLOYMENT AGENCY.—The term
24 “employment agency” has the meaning given the

1 term in section 701(c) of the Civil Rights Act of
2 1964 (42 U.S.C. 2000e(e)).

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

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

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

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

14 (B) a school, college, university, or other
15 educational institution or institution of learn-
16 ing; if—

17 (i) the institution is in whole or sub-
18 stantial part controlled, managed, owned,
19 or supported by a religion, religious cor-
20 poration, association, or society; or

21 (ii) the curriculum of the institution is
22 directed toward the propagation of a reli-
23 gion.

24 (9) SEXUAL ORIENTATION.—The term “sexual
25 orientation” means homosexuality, bisexuality, or

1 heterosexuality, whether the orientation is real or
2 perceived.

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

6 **SEC. 4. DISCRIMINATION PROHIBITED.**

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

9 (1) to fail or refuse to hire or to discharge any
10 individual, or otherwise to discriminate against any
11 individual with respect to the compensation, terms,
12 conditions, or privileges of employment of the indi-
13 vidual, because of such individual’s sexual orienta-
14 tion; or

15 (2) to limit, segregate, or classify the employees
16 or applicants for employment of the employer in any
17 way that would deprive or tend to deprive any indi-
18 vidual of employment or otherwise adversely affect
19 the status of the individual as an employee, because
20 of such individual’s sexual orientation.

21 (b) EMPLOYMENT AGENCY PRACTICES.—It shall be
22 an unlawful employment practice for an employment agen-
23 cy to fail or refuse to refer for employment, or otherwise
24 to discriminate against, any individual because of the sex-
25 ual orientation of the individual or to classify or refer for

1 employment any individual on the basis of the sexual ori-
2 entation of the individual.

3 (c) LABOR ORGANIZATION PRACTICES.—It shall be
4 an unlawful employment practice for a labor organiza-
5 tion—

6 (1) to exclude or to expel from its membership,
7 or otherwise to discriminate against, any individual
8 because of the sexual orientation of the individual;

9 (2) to limit, segregate, or classify its member-
10 ship or applicants for membership, or to classify or
11 fail or refuse to refer for employment any individual,
12 in any way that would deprive or tend to deprive any
13 individual of employment, or would limit such em-
14 ployment or otherwise adversely affect the status of
15 the individual as an employee or as an applicant for
16 employment, because of such individual's sexual ori-
17 entation; or

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

21 (d) TRAINING PROGRAMS.—It shall be an unlawful
22 employment practice for any employer, labor organization,
23 or joint labor-management committee controlling appren-
24 ticeship or other training or retraining, including on-the-
25 job training programs, to discriminate against any indi-

1 vidual because of the sexual orientation of the individual
 2 in admission to, or employment in, any program estab-
 3 lished to provide apprenticeship or other training.

4 (e) ASSOCIATION.—An unlawful employment practice
 5 described in any of subsections (a) through (d) shall be
 6 considered to include an action described in that sub-
 7 section, taken against an individual based on the sexual
 8 orientation of a person with whom the individual associ-
 9 ates or has associated.

10 (f) DISPARATE IMPACT.—Notwithstanding any other
 11 provision of this Act, the fact that an employment practice
 12 has a disparate impact, as the term “disparate impact”
 13 is used in section 703(k) of the Civil Rights Act of 1964
 14 (42 U.S.C. 2000e–2(k)), on the basis of sexual orientation
 15 does not establish a prima facie violation of this Act.

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

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

23 (b) COERCION.—A person shall not coerce, intimi-
 24 date, threaten, or interfere with any individual in the exer-
 25 cise or enjoyment of, or on account of such individual’s

1 having exercised, enjoyed, or assisted in or encouraged the
 2 exercise or enjoyment of, any right granted or protected
 3 by this Act.

4 **SEC. 6. BENEFITS.**

5 This Act does not apply to the provision of employee
 6 benefits to an individual for the benefit of the domestic
 7 partner of such individual.

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

9 The Commission shall not collect statistics on sexual
 10 orientation from covered entities, or compel the collection
 11 of such statistics by covered entities.

12 **SEC. 8. QUOTAS AND PREFERENTIAL TREATMENT PROHIBITED.**

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

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

19 (c) ORDERS AND CONSENT DECREES.—Notwith-
 20 standing any other provision of this Act, an order or con-
 21 sent decree entered for a violation of this Act may not
 22 include a quota, or preferential treatment to an individual,
 23 based on sexual orientation.

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

25 This Act shall not apply to a religious organization.

1 **SEC. 10. NONAPPLICATION TO MEMBERS OF THE ARMED**
2 **FORCES; VETERANS' PREFERENCES.**

3 (a) **ARMED FORCES.**—

4 (1) **EMPLOYMENT.**—In this Act, the term
5 “employment” does not apply to the relationship be-
6 tween the United States and members of the Armed
7 Forces.

8 (2) **ARMED FORCES.**—In paragraph (1), the
9 term “Armed Forces” means the Army, Navy, Air
10 Force, Marine Corps, and Coast Guard.

11 (b) **VETERANS' PREFERENCES.**—This Act does not
12 repeal or modify any Federal, State, territorial, or local
13 law creating a special right or preference concerning em-
14 ployment for a veteran.

15 **SEC. 11. CONSTRUCTION.**

16 (a) **NONPRIVATE CONDUCT.**—Nothing in this Act
17 shall be construed to prohibit a covered entity from enforce-
18 ing rules regarding nonprivate sexual conduct, if the rules
19 of conduct are designed for, and uniformly applied to, all
20 individuals regardless of sexual orientation.

21 (b) **ASSOCIATION.**—Nothing in this Act shall be con-
22 strued to prohibit any association, or infringe upon any
23 right of association, guaranteed by the first amendment
24 to the Constitution, of any nonprofit, voluntary member-
25 ship organization.

1 **SEC. 12. ENFORCEMENT.**

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

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

8 (A) title VII of the Civil Rights Act of
9 1964 (42 U.S.C. 2000e et seq.); or

10 (B) sections 302 and 304 of the Govern-
11 ment Employee Rights Act of 1991 (2 U.S.C.
12 1202 and 1220);

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

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

23 (3) the Board (as defined in section 101 of the
24 Congressional Accountability Act of 1995 (2 U.S.C.
25 1301)) shall have the same powers as the Board has
26 to administer and enforce the Congressional Ac-

1 ~~accountability Act of 1995 (2 U.S.C. 1301 et seq.) in~~
2 ~~the case of a claim alleged by such individual for a~~
3 ~~violation of section 201(a)(1) of such Act (2 U.S.C.~~
4 ~~1311(a)(1));~~

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

8 (A) title VII of the Civil Rights Act of
9 1964 (42 U.S.C. 2000e et seq.); or

10 (B) sections 302 and 304 of the Govern-
11 ment Employee Rights Act of 1991 (2 U.S.C.
12 1202 and 1220);

13 ~~in the case of a claim alleged by such individual for~~
14 ~~a violation of such title, or of section 302(a)(1) of~~
15 ~~the Government Employee Rights Act of 1991 (2~~
16 ~~U.S.C. 1202(a)(1)), respectively;~~

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

1 (6) a court of the United States shall have the
2 same jurisdiction and powers as the court has to en-
3 force—

4 (A) title VII of the Civil Rights Act of
5 1964 (42 U.S.C. 2000e et seq.) in the case of
6 a claim alleged by such individual for a viola-
7 tion of such title;

8 (B) sections 302 and 304 of the Govern-
9 ment Employee Rights Act of 1991 (2 U.S.C.
10 1202 and 1220) in the case of a claim alleged
11 by such individual for a violation of section
12 302(a)(1) of such Act (2 U.S.C. 1202(a)(1));

13 (C) the Congressional Accountability Act
14 of 1995 (2 U.S.C. 1301 et seq.) in the case of
15 a claim alleged by such individual for a viola-
16 tion of section 201(a)(1) of such Act (2 U.S.C.
17 1311(a)(1)); and

18 (D) chapter 5 of title 3, United States
19 Code, in the case of a claim alleged by such in-
20 dividual for a violation of section 411 of such
21 title.

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

1 (1) the procedures and remedies applicable for
2 a violation of title VII of the Civil Rights Act of
3 1964 (42 U.S.C. 2000e et seq.) in the case of a
4 claim alleged by such individual for a violation of
5 such title;

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

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

16 (4) the procedures and remedies applicable for
17 a violation of section 411 of title 3, United States
18 Code, in the case of a claim alleged by such indi-
19 vidual for a violation of such section.

20 (e) OTHER APPLICABLE PROVISIONS.—With respect
21 to a claim alleged by a covered employee (as defined in
22 section 101 of the Congressional Accountability Act of
23 1995 (2 U.S.C. 1301)) for a violation of this Act, title
24 III of the Congressional Accountability Act of 1995 (2
25 U.S.C. 1381 et seq.) shall apply in the same manner as

1 such title applies with respect to a claim alleged by such
 2 a covered employee for a violation of section 201(a)(1) of
 3 such Act (2 U.S.C. 1311(a)(1)).

4 (d) PROHIBITION OF AFFIRMATIVE ACTION.—Not-
 5 withstanding any other provision of this section, affirma-
 6 tive action for a violation of this Act may not be imposed.
 7 Nothing in this section shall prevent the granting of relief
 8 to any individual who suffers a violation of such individ-
 9 ual's rights provided in this Act.

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

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

15 (b) REMEDIES FOR STATE EMPLOYEES.—

16 (1) IN GENERAL.—

17 (A) WAIVER.—A State's receipt or use of
 18 Federal financial assistance for any program or
 19 activity of a State shall constitute a waiver of
 20 sovereign immunity, under the 11th amendment
 21 to the Constitution or otherwise, to a suit
 22 brought by an employee or applicant for em-
 23 ployment of that program or activity under this
 24 Act for a remedy authorized under subsection
 25 (c).

1 (B) DEFINITION.—In this paragraph, the
2 term “program or activity”² has the meaning
3 given the term in section 606 of the Civil
4 Rights Act of 1964 (42 U.S.C. 2000d–4a).

5 (2) OFFICIALS.—An official of a State may be
6 sued in the official capacity of the official by any
7 employee or applicant for employment who has com-
8 plied with the applicable procedures of section 12,
9 for equitable relief that is authorized under this Act.
10 In such a suit the court may award to the prevailing
11 party those costs authorized by section 722 of the
12 Revised Statutes (42 U.S.C. 1988).

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

19 (c) REMEDIES AGAINST THE UNITED STATES AND
20 THE STATES.—Notwithstanding any other provision of
21 this Act, in an action or administrative proceeding against
22 the United States or a State for a violation of this Act,
23 remedies (including remedies at law and in equity, and
24 interest) are available for the violation to the same extent
25 as the remedies are available for a violation of title VII

1 of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.)
2 by a private entity, except that—

3 (1) punitive damages are not available; and

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

7 **SEC. 14. ATTORNEYS' FEES.**

8 Notwithstanding any other provision of this Act, in
9 an action or administrative proceeding for a violation of
10 this Act, an entity described in section 12(a) (other than
11 paragraph (4) of such section), in the discretion of the
12 entity, may allow the prevailing party, other than the
13 Commission or the United States, a reasonable attorney's
14 fee (including expert fees) as part of the costs. The Com-
15 mission and the United States shall be liable for the costs
16 to the same extent as a private person.

17 **SEC. 15. POSTING NOTICES.**

18 A covered entity who is required to post notices de-
19 scribed in section 711 of the Civil Rights Act of 1964 (42
20 U.S.C. 2000e-10) shall post notices for employees, appli-
21 cants for employment, and members, to whom the provi-
22 sions specified in section 12(b) apply, that describe the
23 applicable provisions of this Act in the manner prescribed
24 by, and subject to the penalty provided under, section 711
25 of the Civil Rights Act of 1964.

1 **SEC. 16. REGULATIONS.**

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

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

9 (c) **BOARD.**—The Board referred to in section
10 12(a)(3) shall have authority to issue regulations to carry
11 out this Act, in accordance with section 304 of the Con-
12 gressional Accountability Act of 1995 (2 U.S.C. 1384),
13 with respect to covered employees, as defined in section
14 101 of such Act (2 U.S.C. 1301).

15 (d) **PRESIDENT.**—The President shall have authority
16 to issue regulations to carry out this Act with respect to
17 covered employees, as defined in section 411(e) of title 3,
18 United States Code.

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

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

24 **SEC. 18. SEVERABILITY.**

25 If any provision of this Act, or the application of the
26 provision to any person or circumstance, is held to be in-

1 valid, the remainder of this Act and the application of the
2 provision to any other person or circumstance shall not
3 be affected by the invalidity.

4 **SEC. 19. EFFECTIVE DATE.**

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

8 **SECTION 1. SHORT TITLE.**

9 This Act may be cited as the “Employment Non-Dis-
10 crimination Act of 2002”.

11 **SEC. 2. PURPOSES.**

12 The purposes of this Act are—

13 (1) to provide a comprehensive Federal prohibi-
14 tion of employment discrimination on the basis of
15 sexual orientation;

16 (2) to provide meaningful and effective remedies
17 for employment discrimination on the basis of sexual
18 orientation; and

19 (3) to invoke congressional powers, including the
20 powers to enforce the 14th amendment to the Con-
21 stitution, and to regulate interstate commerce and
22 provide for the general welfare pursuant to section 8
23 of article I of the Constitution, in order to prohibit
24 employment discrimination on the basis of sexual ori-
25 entation.

1 **SEC. 3. DEFINITIONS.**

2 (a) *IN GENERAL.*—*In this Act:*

3 (1) *COMMISSION.*—*The term “Commission”*
4 *means the Equal Employment Opportunity Commis-*
5 *sion.*

6 (2) *COVERED ENTITY.*—*The term “covered enti-*
7 *ty” means an employer, employment agency, labor or-*
8 *ganization, or joint labor-management committee.*

9 (3) *EMPLOYEE.*—

10 (A) *IN GENERAL.*—*The term “employee”*
11 *means—*

12 (i) *an employee (as defined in section*
13 *701(f) of the Civil Rights Act of 1964 (42*
14 *U.S.C. 2000e(f));*

15 (ii) *a Presidential appointee or State*
16 *employee to which section 302(a)(1) of the*
17 *Government Employee Rights Act of 1991*
18 *(2 U.S.C. 1202(a)(1)) applies;*

19 (iii) *a covered employee, as defined in*
20 *section 101 of the Congressional Account-*
21 *ability Act of 1995 (2 U.S.C. 1301) or sec-*
22 *tion 411(c) of title 3, United States Code; or*

23 (iv) *an employee or applicant to which*
24 *section 717(a) of the Civil Rights Act of*
25 *1964 (42 U.S.C. 2000e–16(a)) applies.*

1 (B) *EXCEPTION.*—*The provisions of this Act*
2 *that apply to an employee or individual shall*
3 *not apply to a volunteer who receives no com-*
4 *ensation.*

5 (4) *EMPLOYER.*—*The term “employer” means—*

6 (A) *a person engaged in an industry affect-*
7 *ing commerce (as defined in section 701(h) of the*
8 *Civil Rights Act of 1964 (42 U.S.C. 2000e(h))*
9 *who has 15 or more employees (as defined in*
10 *subparagraphs (A)(i) and (B) of paragraph (3))*
11 *for each working day in each of 20 or more cal-*
12 *endar weeks in the current or preceding calendar*
13 *year, and any agent of such a person, but does*
14 *not include a bona fide private membership club*
15 *(other than a labor organization) that is exempt*
16 *from taxation under section 501(c) of the Inter-*
17 *nal Revenue Code of 1986;*

18 (B) *an employing authority to which sec-*
19 *tion 302(a)(1) of the Government Employee*
20 *Rights Act of 1991 applies;*

21 (C) *an employing office, as defined in sec-*
22 *tion 101 of the Congressional Accountability Act*
23 *of 1995 or section 411(c) of title 3, United States*
24 *Code; or*

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

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

7 (6) LABOR ORGANIZATION.—The term “labor or-
8 ganization” has the meaning given the term in sec-
9 tion 701(d) of the Civil Rights Act of 1964 (42 U.S.C.
10 2000e(d)).

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

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

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

18 (B) a school, college, university, or other
19 educational institution or institution of learn-
20 ing, if—

21 (i) the institution is in whole or sub-
22 stantial part controlled, managed, owned,
23 or supported by a religion, religious cor-
24 poration, association, or society; or

1 (ii) the curriculum of the institution is
2 directed toward the propagation of a reli-
3 gion.

4 (9) *SEXUAL ORIENTATION*.—The term “sexual
5 orientation” means homosexuality, bisexuality, or het-
6 erosexuality, whether the orientation is real or per-
7 ceived.

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

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

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

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

22 **SEC. 4. DISCRIMINATION PROHIBITED.**

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

1 (1) to fail or refuse to hire or to discharge any
2 individual, or otherwise to discriminate against any
3 individual with respect to the compensation, terms,
4 conditions, or privileges of employment of the indi-
5 vidual, because of such individual's sexual orienta-
6 tion; or

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

13 (b) *EMPLOYMENT AGENCY PRACTICES.*—It shall be an
14 unlawful employment practice for an employment agency
15 to fail or refuse to refer for employment, or otherwise to
16 discriminate against, any individual because of the sexual
17 orientation of the individual or to classify or refer for em-
18 ployment any individual on the basis of the sexual orienta-
19 tion of the individual.

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

22 (1) to exclude or to expel from its membership,
23 or otherwise to discriminate against, any individual
24 because of the sexual orientation of the individual;

1 (2) *to limit, segregate, or classify its membership*
2 *or applicants for membership, or to classify or fail or*
3 *refuse to refer for employment any individual, in any*
4 *way that would deprive or tend to deprive any indi-*
5 *vidual of employment, or would limit such employ-*
6 *ment or otherwise adversely affect the status of the in-*
7 *dividual as an employee or as an applicant for em-*
8 *ployment, because of such individual's sexual orienta-*
9 *tion; or*

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

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

21 (e) *ASSOCIATION.—An unlawful employment practice*
22 *described in any of subsections (a) through (d) shall be con-*
23 *sidered to include an action described in that subsection,*
24 *taken against an individual based on the sexual orientation*

1 of a person with whom the individual associates or has asso-
 2 ciated.

3 (f) *DISPARATE IMPACT.*—Only disparate treatment
 4 claims may be brought under this Act.

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

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

13 **SEC. 6. BENEFITS.**

14 This Act does not apply to the provision of employee
 15 benefits to an individual for the benefit of the domestic part-
 16 ner of such individual.

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

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

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

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

1 (b) *PREFERENTIAL TREATMENT.*—A covered entity
 2 shall not give preferential treatment to an individual on
 3 the basis of sexual orientation.

4 (c) *ORDERS AND CONSENT DECREES.*—Notwith-
 5 standing any other provision of this Act, an order or con-
 6 sent decree entered for a violation of this Act may not in-
 7 clude a quota, or preferential treatment to an individual,
 8 based on sexual orientation.

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

10 *This Act shall not apply to a religious organization.*

11 **SEC. 10. NONAPPLICATION TO MEMBERS OF THE ARMED**
 12 **FORCES; VETERANS' PREFERENCES.**

13 (a) *ARMED FORCES.*—

14 (1) *EMPLOYMENT.*—In this Act, the term
 15 “employment” does not apply to the relationship be-
 16 tween the United States and members of the Armed
 17 Forces.

18 (2) *ARMED FORCES.*—In paragraph (1), the
 19 term “Armed Forces” means the Army, Navy, Air
 20 Force, Marine Corps, and Coast Guard.

21 (b) *VETERANS' PREFERENCES.*—This Act does not re-
 22 peal or modify any Federal, State, territorial, or local law
 23 creating a special right or preference concerning employ-
 24 ment for a veteran.

1 **SEC. 11. CONSTRUCTION.**

2 (a) *EMPLOYER RULES AND POLICIES.*—Nothing in
3 this Act shall be construed to prohibit a covered entity from
4 enforcing rules and policies, if the rules or policies are de-
5 signed for, and uniformly applied to, all individuals re-
6 gardless of sexual orientation.

7 (b) *ASSOCIATION.*—Nothing in this Act shall be con-
8 strued to prohibit any association, or infringe upon any
9 right of association, guaranteed by the first amendment to
10 the Constitution, of any nonprofit, voluntary membership
11 organization.

12 **SEC. 12. ENFORCEMENT.**

13 (a) *ENFORCEMENT POWERS.*—With respect to the ad-
14 ministration and enforcement of this Act in the case of a
15 claim alleged by an individual for a violation of this Act—

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

18 (A) title VII of the Civil Rights Act of 1964
19 (42 U.S.C. 2000e et seq.); or

20 (B) sections 302 and 304 of the Government
21 Employee Rights Act of 1991 (2 U.S.C. 1202
22 and 1220);

23 in the case of a claim alleged by such individual for
24 a violation of such title, or of section 302(a)(1) of the
25 Government Employee Rights Act of 1991 (2 U.S.C.
26 1202(a)(1)), respectively;

1 (2) *the Librarian of Congress shall have the same*
2 *powers as the Librarian of Congress has to admin-*
3 *ister and enforce title VII of the Civil Rights Act of*
4 *1964 (42 U.S.C. 2000e et seq.) in the case of a claim*
5 *alleged by such individual for a violation of such*
6 *title;*

7 (3) *the Board (as defined in section 101 of the*
8 *Congressional Accountability Act of 1995 (2 U.S.C.*
9 *1301)) shall have the same powers as the Board has*
10 *to administer and enforce the Congressional Account-*
11 *ability Act of 1995 (2 U.S.C. 1301 et seq.) in the case*
12 *of a claim alleged by such individual for a violation*
13 *of section 201(a)(1) of such Act (2 U.S.C. 1311(a)(1));*

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

17 (A) *title VII of the Civil Rights Act of 1964*
18 (42 U.S.C. 2000e et seq.); *or*

19 (B) *sections 302 and 304 of the Government*
20 *Employee Rights Act of 1991 (2 U.S.C. 1202*
21 *and 1220);*

22 *in the case of a claim alleged by such individual for*
23 *a violation of such title, or of section 302(a)(1) of the*
24 *Government Employee Rights Act of 1991 (2 U.S.C.*
25 *1202(a)(1)), respectively;*

1 (5) *the President, the Commission, and the Merit*
2 *Systems Protection Board shall have the same powers*
3 *as the President, the Commission, and the Board, re-*
4 *spectively, have to administer and enforce chapter 5*
5 *of title 3, United States Code, in the case of a claim*
6 *alleged by such individual for a violation of section*
7 *411 of such title;*

8 (6) *a court of the United States shall have the*
9 *same jurisdiction and powers as the court has to en-*
10 *force—*

11 (A) *title VII of the Civil Rights Act of 1964*
12 *(42 U.S.C. 2000e et seq.) in the case of a claim*
13 *alleged by such individual for a violation of such*
14 *title;*

15 (B) *sections 302 and 304 of the Government*
16 *Employee Rights Act of 1991 (2 U.S.C. 1202*
17 *and 1220) in the case of a claim alleged by such*
18 *individual for a violation of section 302(a)(1) of*
19 *such Act (2 U.S.C. 1202(a)(1));*

20 (C) *the Congressional Accountability Act of*
21 *1995 (2 U.S.C. 1301 et seq.) in the case of a*
22 *claim alleged by such individual for a violation*
23 *of section 201(a)(1) of such Act (2 U.S.C.*
24 *1311(a)(1)); and*

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

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

7 (1) the procedures and remedies applicable for a
8 violation of title VII of the Civil Rights Act of 1964
9 (42 U.S.C. 2000e et seq.) in the case of a claim al-
10 leged by such individual for a violation of such title;

11 (2) the procedures and remedies applicable for a
12 violation of section 302(a)(1) of the Government Em-
13 ployee Rights Act of 1991 (2 U.S.C. 1202(a)(1)) in
14 the case of a claim alleged by such individual for a
15 violation of such section;

16 (3) the procedures and remedies applicable for a
17 violation of section 201(a)(1) of the Congressional Ac-
18 countability Act of 1995 (2 U.S.C. 1311(a)(1)) in the
19 case of a claim alleged by such individual for a viola-
20 tion of such section; and

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

1 (c) *OTHER APPLICABLE PROVISIONS.*—With respect to
 2 a claim alleged by a covered employee (as defined in section
 3 101 of the Congressional Accountability Act of 1995 (2
 4 U.S.C. 1301)) for a violation of this Act, title III of the
 5 Congressional Accountability Act of 1995 (2 U.S.C. 1381
 6 et seq.) shall apply in the same manner as such title applies
 7 with respect to a claim alleged by such a covered employee
 8 for a violation of section 201(a)(1) of such Act (2 U.S.C.
 9 1311(a)(1)).

10 (d) *PROHIBITION OF AFFIRMATIVE ACTION.*—Notwith-
 11 standing any other provision of this section, affirmative ac-
 12 tion for a violation of this Act may not be imposed. Nothing
 13 in this section shall prevent the granting of relief to any
 14 individual who suffers a violation of such individual’s
 15 rights provided in this Act.

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

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

21 (b) *REMEDIES FOR STATE EMPLOYEES.*—

22 (1) *IN GENERAL.*—

23 (A) *WAIVER.*—A State’s receipt or use of
 24 Federal financial assistance for any program or
 25 activity of a State shall constitute a waiver of

1 *sovereign immunity, under the 11th amendment*
2 *to the Constitution or otherwise, to a suit*
3 *brought by an employee or applicant for employ-*
4 *ment of that program or activity under this Act*
5 *for a remedy authorized under subsection (c).*

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

10 (2) *OFFICIALS.*—*An official of a State may be*
11 *sued in the official capacity of the official by any em-*
12 *ployee or applicant for employment who has complied*
13 *with the applicable procedures of section 12, for equi-*
14 *table relief that is authorized under this Act. In such*
15 *a suit the court may award to the prevailing party*
16 *those costs authorized by section 722 of the Revised*
17 *Statutes (42 U.S.C. 1988).*

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

24 (c) *REMEDIES AGAINST THE UNITED STATES AND*
25 *THE STATES.*—*Notwithstanding any other provision of this*

1 *Act, in an action or administrative proceeding against the*
 2 *United States or a State for a violation of this Act, remedies*
 3 *(including remedies at law and in equity, and interest) are*
 4 *available for the violation to the same extent as the remedies*
 5 *are available for a violation of title VII of the Civil Rights*
 6 *Act of 1964 (42 U.S.C. 2000e et seq.) by a private entity,*
 7 *except that—*

8 (1) *punitive damages are not available; and*
 9 (2) *compensatory damages are available to the*
 10 *extent specified in section 1977A(b) of the Revised*
 11 *Statutes (42 U.S.C. 1981a(b)).*

12 **SEC. 14. ATTORNEYS' FEES.**

13 *Notwithstanding any other provision of this Act, in*
 14 *an action or administrative proceeding for a violation of*
 15 *this Act, an entity described in section 12(a) (other than*
 16 *paragraph (4) of such section), in the discretion of the enti-*
 17 *ty, may allow the prevailing party, other than the Commis-*
 18 *sion or the United States, a reasonable attorney's fee*
 19 *(including expert fees) as part of the costs. The Commission*
 20 *and the United States shall be liable for the costs to the*
 21 *same extent as a private person.*

22 **SEC. 15. POSTING NOTICES.**

23 *A covered entity who is required to post notices de-*
 24 *scribed in section 711 of the Civil Rights Act of 1964 (42*
 25 *U.S.C. 2000e-10) shall post notices for employees, appli-*

1 *cants for employment, and members, to whom the provi-*
2 *sions specified in section 12(b) apply, that describe the ap-*
3 *plicable provisions of this Act in the manner prescribed by,*
4 *and subject to the penalty provided under, section 711 of*
5 *the Civil Rights Act of 1964.*

6 **SEC. 16. REGULATIONS.**

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

10 *(b) LIBRARIAN OF CONGRESS.—The Librarian of Con-*
11 *gress shall have authority to issue regulations to carry out*
12 *this Act with respect to employees and applicants for em-*
13 *ployment of the Library of Congress.*

14 *(c) BOARD.—The Board referred to in section 12(a)(3)*
15 *shall have authority to issue regulations to carry out this*
16 *Act, in accordance with section 304 of the Congressional*
17 *Accountability Act of 1995 (2 U.S.C. 1384), with respect*
18 *to covered employees, as defined in section 101 of such Act*
19 *(2 U.S.C. 1301).*

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

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

2 *This Act shall not invalidate or limit the rights, rem-*
3 *edies, or procedures available to an individual claiming*
4 *discrimination prohibited under any other Federal law or*
5 *any law of a State or political subdivision of a State.*

6 **SEC. 18. SEVERABILITY.**

7 *If any provision of this Act, or the application of the*
8 *provision to any person or circumstance, is held to be in-*
9 *valid, the remainder of this Act and the application of the*
10 *provision to any other person or circumstance shall not be*
11 *affected by the invalidity.*

12 **SEC. 19. EFFECTIVE DATE.**

13 *This Act shall take effect 60 days after the date of en-*
14 *actment of this Act and shall not apply to conduct occur-*
15 *ring before the effective date.*

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107TH CONGRESS
2^D SESSION

S. 1284

[Report No. 107-341]

A BILL

To prohibit employment discrimination on the basis
of sexual orientation.

NOVEMBER 15, 2002

Reported with an amendment