

113TH CONGRESS
1ST SESSION

S. 815

AN ACT

To prohibit employment discrimination on the basis of sexual orientation or gender identity.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Employment Non-Dis-
3 crimination Act of 2013”.

4 **SEC. 2. PURPOSES.**

5 The purposes of this Act are—

6 (1) to address the history and persistent, wide-
7 spread pattern of discrimination on the bases of sex-
8 ual orientation and gender identity by private sector
9 employers and local, State, and Federal Government
10 employers;

11 (2) to provide an explicit, comprehensive Fed-
12 eral prohibition against employment discrimination
13 on the bases of sexual orientation and gender iden-
14 tity, including meaningful and effective remedies for
15 any such discrimination;

16 (3) to invoke congressional powers, including
17 the powers to enforce the 14th Amendment to the
18 Constitution, and to regulate interstate commerce
19 pursuant to section 8 of article I of the Constitution,
20 in order to prohibit employment discrimination on
21 the bases of sexual orientation and gender identity;
22 and

23 (4) to reinforce the Nation’s commitment to
24 fairness and equal opportunity in the workplace con-
25 sistent with the fundamental right of religious free-
26 dom.

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 en-
7 tity” means an employer, employment agency, labor
8 organization, or joint labor-management committee.

9 (3) DEMONSTRATES.—The term “dem-
10 onstrates” means meets the burdens of production
11 and persuasion.

12 (4) EMPLOYEE.—

13 (A) IN GENERAL.—The term “employee”
14 means—

15 (i) an employee as defined in section
16 701(f) of the Civil Rights Act of 1964 (42
17 U.S.C. 2000e(f));

18 (ii) a State employee to which section
19 302(a)(1) of the Government Employee
20 Rights Act of 1991 (42 U.S.C. 2000e-
21 16b(a)(1)) applies;

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

1 (iv) an employee or applicant to which
2 section 717(a) of the Civil Rights Act of
3 1964 (42 U.S.C. 2000e-16(a)) applies.

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

8 (5) EMPLOYER.—The term “employer”
9 means—

10 (A) a person engaged in an industry affect-
11 ing commerce (as defined in section 701(h) of
12 the Civil Rights Act of 1964 (42 U.S.C.
13 2000e(h)) who has 15 or more employees (as
14 defined in subparagraphs (A)(i) and (B) of
15 paragraph (4)) for each working day in each of
16 20 or more calendar weeks in the current or
17 preceding calendar year, and any agent of such
18 a person, but does not include a bona fide pri-
19 vate membership club (other than a labor orga-
20 nization) that is exempt from taxation under
21 section 501(c) of the Internal Revenue Code of
22 1986;

23 (B) an employing authority to which sec-
24 tion 302(a)(1) of the Government Employee
25 Rights Act of 1991 applies;

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

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

7 (6) EMPLOYMENT AGENCY.—The term “em-
8 ployment agency” has the meaning given the term in
9 section 701(c) of the Civil Rights Act of 1964 (42
10 U.S.C. 2000e(c)).

11 (7) GENDER IDENTITY.—The term “gender
12 identity” means the gender-related identity, appear-
13 ance, or mannerisms or other gender-related charac-
14 teristics of an individual, with or without regard to
15 the individual’s designated sex at birth.

16 (8) LABOR ORGANIZATION.—The term “labor
17 organization” has the meaning given the term in
18 section 701(d) of the Civil Rights Act of 1964 (42
19 U.S.C. 2000e(d)).

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

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

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

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

7 (1) to an employee or an employer shall be con-
 8 sidered to refer to an employee (as defined in sub-
 9 section (a)(4)) or an employer (as defined in sub-
 10 section (a)(5)), respectively, except as provided in
 11 paragraph (2) of this subsection; and

12 (2) to an employer in subsection (f) of that sec-
 13 tion shall be considered to refer to an employer (as
 14 defined in subsection (a)(5)(A)).

15 **SEC. 4. EMPLOYMENT DISCRIMINATION PROHIBITED.**

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

18 (1) to fail or refuse to hire or to discharge any
 19 individual, or otherwise discriminate against any in-
 20 dividual with respect to the compensation, terms,
 21 conditions, or privileges of employment of the indi-
 22 vidual, because of such individual’s actual or per-
 23 ceived sexual orientation or gender identity; or

24 (2) to limit, segregate, or classify the employees
 25 or applicants for employment of the employer in any

1 way that would deprive or tend to deprive any indi-
2 vidual of employment or otherwise adversely affect
3 the status of the individual as an employee, because
4 of such individual's actual or perceived sexual ori-
5 entation or gender identity.

6 (b) EMPLOYMENT AGENCY PRACTICES.—It shall be
7 an unlawful employment practice for an employment agen-
8 cy to fail or refuse to refer for employment, or otherwise
9 to discriminate against, any individual because of the ac-
10 tual or perceived sexual orientation or gender identity of
11 the individual or to classify or refer for employment any
12 individual on the basis of the actual or perceived sexual
13 orientation or gender identity of the individual.

14 (c) LABOR ORGANIZATION PRACTICES.—It shall be
15 an unlawful employment practice for a labor organiza-
16 tion—

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

21 (2) to limit, segregate, or classify its member-
22 ship or applicants for membership, or to classify or
23 fail or refuse to refer for employment any individual,
24 in any way that would deprive or tend to deprive any
25 individual of employment, or would limit such em-

1 ployment or otherwise adversely affect the status of
2 the individual as an employee or as an applicant for
3 employment because of such individual's actual or
4 perceived sexual orientation or gender identity; or

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

8 (d) TRAINING PROGRAMS.—It shall be an unlawful
9 employment practice for any employer, labor organization,
10 or joint labor-management committee controlling appren-
11 ticeship or other training or retraining, including on-the-
12 job training programs, to discriminate against any indi-
13 vidual because of the actual or perceived sexual orientation
14 or gender identity of the individual in admission to, or em-
15 ployment in, any program established to provide appren-
16 ticeship or other training.

17 (e) ASSOCIATION.—An unlawful employment practice
18 described in any of subsections (a) through (d) shall be
19 considered to include an action described in that sub-
20 section, taken against an individual based on the actual
21 or perceived sexual orientation or gender identity of a per-
22 son with whom the individual associates or has associated.

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

1 (1) any covered entity to grant preferential
2 treatment to any individual or to any group because
3 of the actual or perceived sexual orientation or gen-
4 der identity of such individual or group on account
5 of an imbalance which may exist with respect to the
6 total number or percentage of persons of any actual
7 or perceived sexual orientation or gender identity
8 employed by any employer, referred or classified for
9 employment by any employment agency or labor or-
10 ganization, admitted to membership or classified by
11 any labor organization, or admitted to, or employed
12 in, any apprenticeship or other training program, in
13 comparison with the total number or percentage of
14 persons of such actual or perceived sexual orienta-
15 tion or gender identity in any community, State, sec-
16 tion, or other area, or in the available work force in
17 any community, State, section, or other area; or

18 (2) the adoption or implementation by a cov-
19 ered entity of a quota on the basis of actual or per-
20 ceived sexual orientation or gender identity.

21 (g) NO DISPARATE IMPACT CLAIMS.—Only disparate
22 treatment claims may be brought under this Act.

23 (h) STANDARDS OF PROOF.—Except as otherwise
24 provided, an unlawful employment practice is established
25 when the complaining party demonstrates that sexual ori-

1 entation or gender identity was a motivating factor for any
2 employment practice, even though other factors also moti-
3 vated the practice.

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

5 It shall be an unlawful employment practice for a cov-
6 ered entity to discriminate against an individual because
7 such individual—

8 (1) opposed any practice made an unlawful em-
9 ployment practice by this Act; or

10 (2) made a charge, testified, assisted, or partici-
11 pated in any manner in an investigation, proceeding,
12 or hearing under this Act.

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

14 (a) IN GENERAL.—This Act shall not apply to a cor-
15 poration, association, educational institution or institution
16 of learning, or society that is exempt from the religious
17 discrimination provisions of title VII of the Civil Rights
18 Act of 1964 (42 U.S.C. 2000e et seq.) pursuant to section
19 702(a) or 703(e)(2) of such Act (42 U.S.C. 2000e–1(a),
20 2000e–2(e)(2)) (referred to in this section as a “religious
21 employer”).

22 (b) PROHIBITION ON CERTAIN GOVERNMENT AC-
23 TIONS.—A religious employer’s exemption under this sec-
24 tion shall not result in any action by a Federal agency,
25 or any State or local agency that receives Federal funding

1 or financial assistance, to penalize or withhold licenses,
2 permits, certifications, accreditation, contracts, grants,
3 guarantees, tax-exempt status, or any benefits or exemp-
4 tions from that employer, or to prohibit the employer's
5 participation in programs or activities sponsored by that
6 Federal, State, or local agency. Nothing in this subsection
7 shall be construed to invalidate any other Federal, State,
8 or local law (including a regulation) that otherwise applies
9 to a religious employer exempt under this section.

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

12 (a) ARMED FORCES.—

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

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

20 (b) VETERANS' PREFERENCES.—This title does not
21 repeal or modify any Federal, State, territorial, or local
22 law creating a special right or preference concerning em-
23 ployment for a veteran.

1 **SEC. 8. CONSTRUCTION.**

2 (a) DRESS OR GROOMING STANDARDS.—Nothing in
3 this Act shall prohibit an employer from requiring an em-
4 ployee, during the employee’s hours at work, to adhere to
5 reasonable dress or grooming standards not prohibited by
6 other provisions of Federal, State, or local law, provided
7 that the employer permits any employee who has under-
8 gone gender transition prior to the time of employment,
9 and any employee who has notified the employer that the
10 employee has undergone or is undergoing gender transi-
11 tion after the time of employment, to adhere to the same
12 dress or grooming standards as apply for the gender to
13 which the employee has transitioned or is transitioning.

14 (b) ADDITIONAL FACILITIES NOT REQUIRED.—
15 Nothing in this Act shall be construed to require the con-
16 struction of new or additional facilities.

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

18 The Commission and the Secretary of Labor shall
19 neither compel the collection of nor require the production
20 of statistics on actual or perceived sexual orientation or
21 gender identity from covered entities pursuant to this Act.

22 **SEC. 10. ENFORCEMENT.**

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

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

3 (A) title VII of the Civil Rights Act of
4 1964 (42 U.S.C. 2000e et seq.); or

5 (B) sections 302 and 304 of the Govern-
6 ment Employee Rights Act of 1991 (42 U.S.C.
7 2000e–16b and 2000e–16c),

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

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

18 (3) the Board (as defined in section 101 of the
19 Congressional Accountability Act of 1995 (2 U.S.C.
20 1301)) shall have the same powers as the Board has
21 to administer and enforce the Congressional Ac-
22 countability Act of 1995 (2 U.S.C. 1301 et seq.) in
23 the case of a claim alleged by such individual for a
24 violation of section 201(a)(1) of such Act (2 U.S.C.
25 1311(a)(1));

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

4 (A) title VII of the Civil Rights Act of
5 1964 (42 U.S.C. 2000e et seq.); or

6 (B) sections 302 and 304 of the Govern-
7 ment Employee Rights Act of 1991 (42 U.S.C.
8 2000e–16b and 2000e–16c);

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

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

20 (6) a court of the United States shall have the
21 same jurisdiction and powers as the court has to en-
22 force—

23 (A) title VII of the Civil Rights Act of
24 1964 (42 U.S.C. 2000e et seq.) in the case of

1 a claim alleged by such individual for a viola-
2 tion of such title;

3 (B) sections 302 and 304 of the Govern-
4 ment Employee Rights Act of 1991 (42 U.S.C.
5 2000e–16b and 2000e–16c) in the case of a
6 claim alleged by such individual for a violation
7 of section 302(a)(1) of such Act (42 U.S.C.
8 2000e–16b(a)(1));

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

14 (D) chapter 5 of title 3, United States
15 Code, in the case of a claim alleged by such in-
16 dividual for a violation of section 411 of such
17 title.

18 (b) PROCEDURES AND REMEDIES.—Except as pro-
19 vided in section 4(g), the procedures and remedies applica-
20 ble to a claim alleged by an individual for a violation of
21 this Act are—

22 (1) the procedures and remedies applicable for
23 a violation of title VII of the Civil Rights Act of
24 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 (42 U.S.C. 2000e–
6 16b(a)(1)) in the case of a claim alleged by such in-
7 dividual for a violation of such section;

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

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

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

1 (d) NO DOUBLE RECOVERY.—An individual who files
2 claims alleging that a practice is an unlawful employment
3 practice under this Act and an unlawful employment prac-
4 tice because of sex under title VII of the Civil Rights Act
5 of 1964 (42 U.S.C. 2000e et seq.) shall not be permitted
6 to recover damages for such practice under both of—

7 (1) this Act; and

8 (2) section 1977A of the Revised Statutes (42
9 U.S.C. 1981a) and title VII of the Civil Rights Act
10 of 1964.

11 (e) MOTIVATING FACTOR DECISIONS.—On a claim in
12 which an individual proved a violation under section 4(h)
13 and a respondent demonstrates that the respondent would
14 have taken the same action in the absence of the imper-
15 missible motivating factor, the court—

16 (1) may grant declaratory relief, injunctive re-
17 lief (except as provided in paragraph (2)), and attor-
18 ney’s fees and costs demonstrated to be directly at-
19 tributable only to the pursuit of a claim under sec-
20 tion 4(h); and

21 (2) shall not award damages or issue an order
22 requiring any admission, reinstatement, hiring, pro-
23 motion, or payment.

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

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

6 (b) **WAIVER OF STATE IMMUNITY.**—

7 (1) **IN GENERAL.**—

8 (A) **WAIVER.**—A State’s receipt or use of
9 Federal financial assistance for any program or
10 activity of a State shall constitute a waiver of
11 sovereign immunity, under the 11th Amend-
12 ment to the Constitution or otherwise, to a suit
13 brought by an employee or applicant for em-
14 ployment of that program or activity under this
15 Act for a remedy authorized under subsection
16 (d).

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

21 (2) **EFFECTIVE DATE.**—With respect to a par-
22 ticular program or activity, paragraph (1) applies to
23 conduct occurring on or after the day, after the date
24 of enactment of this Act, on which a State first re-
25 ceives or uses Federal financial assistance for that
26 program or activity.

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

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

18 (1) punitive damages are not available; and

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

22 **SEC. 12. ATTORNEYS' FEES.**

23 (a) DEFINITION.—For purposes of this section, the
 24 term “decisionmaker” means an entity described in sec-

1 tion 10(a) (other than paragraph (4) of such section), act-
2 ing in the discretion of the entity.

3 (b) **AUTHORITY.**—Notwithstanding any other provi-
4 sion of this Act, in an action or administrative proceeding
5 for a violation of this Act, a decisionmaker may allow the
6 prevailing party, other than the Commission or the United
7 States, a reasonable attorney’s fee (including expert fees)
8 as part of the costs, to the same extent as is permitted
9 under title VII of the Civil Rights Act of 1964 (42 U.S.C.
10 2000e et seq.), sections 302 and 304 of the Government
11 Employee Rights Act of 1991 (42 U.S.C. 2000e–16b and
12 2000e–16c), the Congressional Accountability Act of 1995
13 (2 U.S.C. 1301 et seq.), or chapter 5 of title 3, United
14 States Code, whichever applies to the prevailing party in
15 that action or proceeding. The Commission and the United
16 States shall be liable for the costs to the same extent as
17 a private person.

18 **SEC. 13. POSTING NOTICES.**

19 A covered entity who is required to post a notice de-
20 scribed in section 711 of the Civil Rights Act of 1964 (42
21 U.S.C. 2000e–10) may be required to post an amended
22 notice, including a description of the applicable provisions
23 of this Act, in the manner prescribed by, and subject to
24 the penalty provided under, section 711 of the Civil Rights

1 Act of 1964. Nothing in this Act shall be construed to
2 require a separate notice to be posted.

3 **SEC. 14. REGULATIONS.**

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

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

11 (c) BOARD.—The Board referred to in section
12 10(a)(3) shall have authority to issue regulations to carry
13 out this Act, in accordance with section 304 of the Con-
14 gressional Accountability Act of 1995 (2 U.S.C. 1384),
15 with respect to covered employees, as defined in section
16 101 of such Act (2 U.S.C. 1301).

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

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

23 This Act shall not invalidate or limit the rights, rem-
24 edies, or procedures available to an individual claiming
25 discrimination prohibited under any other Federal law or

1 regulation or any law or regulation of a State or political
2 subdivision of a State.

3 **SEC. 16. SEVERABILITY.**

4 If any provision of this Act, or the application of the
5 provision to any person or circumstance, is held to be in-
6 valid, the remainder of this Act and the application of the
7 provision to any other person or circumstances shall not
8 be affected by the invalidity.

9 **SEC. 17. EFFECTIVE DATE.**

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

Passed the Senate November 7, 2013.

Attest:

Secretary.

113TH CONGRESS
1ST SESSION

S. 815

AN ACT

To prohibit employment discrimination on the basis
of sexual orientation or gender identity.