

Calendar No. 184113TH CONGRESS
1ST SESSION**S. 815****[Report No. 113-105]**

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

IN THE SENATE OF THE UNITED STATES

APRIL 25, 2013

Mr. MERKLEY (for himself, Mr. HARKIN, Mr. KIRK, Ms. COLLINS, Ms. BALDWIN, Mr. WHITEHOUSE, Ms. WARREN, Mr. UDALL of New Mexico, Ms. STABENOW, Mrs. SHAHEEN, Mr. SANDERS, Mrs. MURRAY, Mr. LEVIN, Mr. LEAHY, Mr. LAUTENBERG, Mr. KAINE, Ms. HIRONO, Mrs. GILLIBRAND, Mr. COONS, Mr. BROWN, Mrs. BOXER, Mr. BAUCUS, Mrs. HAGAN, Mr. MURPHY, Mr. BENNET, Mr. FRANKEN, Mr. REED, Mrs. FEINSTEIN, Mrs. MCCASKILL, Mr. UDALL of Colorado, Mr. WARNER, Ms. MIKULSKI, Mr. BLUMENTHAL, Mr. COWAN, Mr. SCHATZ, Ms. KLOBUCHAR, Mr. CARDIN, Mr. WYDEN, Mr. HEINRICH, Ms. LANDRIEU, Mr. MENENDEZ, Mr. BEGICH, Mr. SCHUMER, Mr. DURBIN, Mr. CASEY, Mr. DONNELLY, Mr. TESTER, Ms. CANTWELL, Mr. KING, Ms. HEITKAMP, Mr. CARPER, Mr. ROCKEFELLER, Mr. REID, Mr. JOHNSON of South Dakota, and Mr. MARKEY) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

SEPTEMBER 12, 2013

Reported by Mr. HARKIN, with an amendment

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

A BILL

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,*

3 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are—

8 (1) to address the history and persistent, wide-
 9 spread pattern of discrimination, including unconsti-
 10 tutional discrimination, on the bases of sexual ori-
 11 entation and gender identity by private sector em-
 12 ployers and local, State, and Federal Government
 13 employers;

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

19 (3) to invoke congressional powers, including
 20 the powers to enforce the 14th Amendment to the

1 Constitution, and to regulate interstate commerce
 2 pursuant to section 8 of article I of the Constitution,
 3 in order to prohibit employment discrimination on
 4 the bases of sexual orientation and gender identity.

5 **SEC. 3. DEFINITIONS.**

6 (a) IN GENERAL.—In this Act:

7 (1) COMMISSION.—The term “Commission”
 8 means the Equal Employment Opportunity Commis-
 9 sion.

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

13 (3) EMPLOYEE.—

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

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

19 (ii) a State employee to which section
 20 302(a)(1) of the Government Employee
 21 Rights Act of 1991 (42 U.S.C. 2000e-
 22 16b(a)(1)) applies;

23 (iii) a covered employee, as defined in
 24 section 101 of the Congressional Account-
 25 ability Act of 1995 (2 U.S.C. 1301) or sec-

1 tion 411(c) of title 3, United States Code;
2 or

3 (iv) an employee or applicant to which
4 section 717(a) of the Civil Rights Act of
5 1964 (42 U.S.C. 2000e-16(a)) applies.

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

10 (4) EMPLOYER.—The term “employer”
11 means—

12 (A) a person engaged in an industry affect-
13 ing commerce (as defined in section 701(h) of
14 the Civil Rights Act of 1964 (42 U.S.C.
15 2000e(h)) who has 15 or more employees (as
16 defined in subparagraphs (A)(i) and (B) of
17 paragraph (3)) for each working day in each of
18 20 or more calendar weeks in the current or
19 preceding calendar year, and any agent of such
20 a person, but does not include a bona fide pri-
21 vate membership club (other than a labor orga-
22 nization) that is exempt from taxation under
23 section 501(c) of the Internal Revenue Code of
24 1986;

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

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

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

10 (5) EMPLOYMENT AGENCY.—The term “em-
11 ployment agency” has the meaning given the term in
12 section 701(e) of the Civil Rights Act of 1964 (42
13 U.S.C. 2000e(e)).

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

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

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

1 (9) **SEXUAL ORIENTATION.**—The term “sexual
2 orientation” means homosexuality, heterosexuality,
3 or bisexuality.

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

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

10 (1) to an employee or an employer shall be con-
11 sidered to refer to an employee (as defined in sub-
12 section (a)(3)) or an employer (as defined in sub-
13 section (a)(4)), respectively, except as provided in
14 paragraph (2) of this subsection; and

15 (2) to an employer in subsection (f) of that sec-
16 tion shall be considered to refer to an employer (as
17 defined in subsection (a)(4)(A)).

18 **SEC. 4. EMPLOYMENT DISCRIMINATION PROHIBITED.**

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

21 (1) to fail or refuse to hire or to discharge any
22 individual, or otherwise discriminate against any in-
23 dividual with respect to the compensation, terms,
24 conditions, or privileges of employment of the indi-

1 vidual, because of such individual's actual or per-
2 ceived sexual orientation or gender identity; or

3 (2) to limit, segregate, or classify the employees
4 or applicants for employment of the employer in any
5 way that would deprive or tend to deprive any indi-
6 vidual of employment or otherwise adversely affect
7 the status of the individual as an employee, because
8 of such individual's actual or perceived sexual ori-
9 entation or gender identity.

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

18 (c) LABOR ORGANIZATION PRACTICES.—It shall be
19 an unlawful employment practice for a labor organiza-
20 tion—

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

1 (2) to limit, segregate, or classify its member-
 2 ship or applicants for membership, or to classify or
 3 fail or refuse to refer for employment any individual,
 4 in any way that would deprive or tend to deprive any
 5 individual of employment, or would limit such em-
 6 ployment or otherwise adversely affect the status of
 7 the individual as an employee or as an applicant for
 8 employment because of such individual's actual or
 9 perceived sexual orientation or gender identity; or

10 (3) to cause or attempt to cause an employer to
 11 discriminate against an individual in violation of this
 12 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 actual or perceived sexual orientation
 19 or gender identity of the individual in admission to, or em-
 20 ployment in, any program established to provide appren-
 21 ticeship or other training.

22 (e) ASSOCIATION.—An unlawful employment practice
 23 described in any of subsections (a) through (d) shall be
 24 considered to include an action described in that sub-
 25 section, taken against an individual based on the actual

1 or perceived sexual orientation or gender identity of a per-
2 son with whom the individual associates or has associated.

3 ~~(f) NO PREFERENTIAL TREATMENT OR QUOTAS.—~~

4 Nothing in this Act shall be construed or interpreted to
5 require or permit—

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

23 ~~(2) the adoption or implementation by a cov-~~
24 ~~ered entity of a quota on the basis of actual or per-~~
25 ~~ceived sexual orientation or gender identity.~~

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

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

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

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

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

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

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

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

21 (a) **ARMED FORCES.**—

22 (1) **EMPLOYMENT.**—In this Act, the term “em-
23 ployment” does not apply to the relationship be-
24 tween the United States and members of the Armed
25 Forces.

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

4 (b) **VETERANS’ PREFERENCES.**—This title does not
5 repeal or modify any Federal, State, territorial, or local
6 law creating a special right or preference concerning em-
7 ployment for a veteran.

8 **SEC. 8. CONSTRUCTION.**

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

21 (b) **ADDITIONAL FACILITIES NOT REQUIRED.**—
22 Nothing in this Act shall be construed to require the con-
23 struction of new or additional facilities.

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

2 The Commission shall neither compel the collection
3 of nor require the production of statistics on actual or per-
4 ceived sexual orientation or gender identity from covered
5 entities.

6 **SEC. 10. ENFORCEMENT.**

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

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

13 (A) title VII of the Civil Rights Act of
14 1964 (42 U.S.C. 2000e et seq.); or

15 (B) sections 302 and 304 of the Govern-
16 ment Employee Rights Act of 1991 (42 U.S.C.
17 2000e–16b and 2000e–16c);

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

22 (2) the Librarian of Congress shall have the
23 same powers as the Librarian of Congress has to ad-
24 minister and enforce title VII of the Civil Rights Act
25 of 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 ~~(3) the Board (as defined in section 101 of the~~
4 ~~Congressional Accountability Act of 1995 (2 U.S.C.~~
5 ~~1301)) shall have the same powers as the Board has~~
6 ~~to administer and enforce the Congressional Ac-~~
7 ~~countability Act of 1995 (2 U.S.C. 1301 et seq.) in~~
8 ~~the case of a claim alleged by such individual for a~~
9 ~~violation of section 201(a)(1) of such Act (2 U.S.C.~~
10 ~~1311(a)(1));~~

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

14 ~~(A) title VII of the Civil Rights Act of~~
15 ~~1964 (42 U.S.C. 2000e et seq.); or~~

16 ~~(B) sections 302 and 304 of the Govern-~~
17 ~~ment Employee Rights Act of 1991 (42 U.S.C.~~
18 ~~2000e-16b and 2000e-16c);~~

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

23 ~~(5) the President, the Commission, and the~~
24 ~~Merit Systems Protection Board shall have the same~~
25 ~~powers as the President, the Commission, and the~~

1 Board, respectively, have to administer and enforce
2 chapter 5 of title 3, United States Code, in the case
3 of a claim alleged by such individual for a violation
4 of section 411 of such title; and

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

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

12 (B) sections 302 and 304 of the Govern-
13 ment Employee Rights Act of 1991 (42 U.S.C.
14 2000e-16b and 2000e-16e) in the case of a
15 claim alleged by such individual for a violation
16 of section 302(a)(1) of such Act (42 U.S.C.
17 2000e-16b(a)(1));

18 (C) the Congressional Accountability Act
19 of 1995 (2 U.S.C. 1301 et seq.) in the case of
20 a claim alleged by such individual for a viola-
21 tion of section 201(a)(1) of such Act (2 U.S.C.
22 1311(a)(1)); and

23 (D) chapter 5 of title 3, United States
24 Code, in the case of a claim alleged by such in-

1 dividual for a violation of section 411 of such
2 title.

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

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

11 (2) the procedures and remedies applicable for
12 a violation of section 302(a)(1) of the Government
13 Employee Rights Act of 1991 (42 U.S.C. 2000e-
14 16b(a)(1)) in the case of a claim alleged by such in-
15 dividual for a violation of such section;

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

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

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

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

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

15 (b) WAIVER OF STATE IMMUNITY.—

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 Amend-
 21 ment 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 (d).

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) EFFECTIVE DATE.—With respect to a par-
6 ticular program or activity, paragraph (1) applies to
7 conduct occurring on or after the day, after the date
8 of enactment of this Act, on which a State first re-
9 ceives or uses Federal financial assistance for that
10 program or activity.

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

19 (d) 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. 12. 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 10(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. 13. 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 10(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. 14. 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 10(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, and applicants for employment as
19 such employees.

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

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

1 **SEC. 16. SEVERABILITY.**

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

7 **SEC. 17. EFFECTIVE DATE.**

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

11 **SECTION 1. SHORT TITLE.**

12 *This Act may be cited as the “Employment Non-Dis-*
 13 *crimination Act of 2013”.*

14 **SEC. 2. PURPOSES.**

15 *The purposes of this Act are—*

16 *(1) to address the history and persistent, wide-*
 17 *spread pattern of discrimination, including unconsti-*
 18 *tutional discrimination, on the bases of sexual ori-*
 19 *entation and gender identity by private sector em-*
 20 *ployers and local, State, and Federal Government em-*
 21 *ployers;*

22 *(2) to provide an explicit, comprehensive Federal*
 23 *prohibition against employment discrimination on*
 24 *the bases of sexual orientation and gender identity,*
 25 *including meaningful and effective remedies for any*
 26 *such discrimination; and*

1 (3) *to invoke congressional powers, including the*
 2 *powers to enforce the 14th Amendment to the Con-*
 3 *stitution, and to regulate interstate commerce pursu-*
 4 *ant to section 8 of article I of the Constitution, in*
 5 *order to prohibit employment discrimination on the*
 6 *bases of sexual orientation and gender identity.*

7 **SEC. 3. DEFINITIONS.**

8 (a) *IN GENERAL.*—*In this Act:*

9 (1) *COMMISSION.*—*The term “Commission”*
 10 *means the Equal Employment Opportunity Commis-*
 11 *sion.*

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

15 (3) *DEMONSTRATES.*—*The term “demonstrates”*
 16 *means meets the burdens of production and persua-*
 17 *sion.*

18 (4) *EMPLOYEE.*—

19 (A) *IN GENERAL.*—*The term “employee”*
 20 *means—*

21 (i) *an employee as defined in section*
 22 *701(f) of the Civil Rights Act of 1964 (42*
 23 *U.S.C. 2000e(f));*

24 (ii) *a State employee to which section*
 25 *302(a)(1) of the Government Employee*

1 *Rights Act of 1991 (42 U.S.C. 2000e–*
2 *16b(a)(1)) applies;*

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

7 (iv) *an employee or applicant to which*
8 *section 717(a) of the Civil Rights Act of*
9 *1964 (42 U.S.C. 2000e–16(a)) applies.*

10 (B) *EXCEPTION.—The provisions of this Act*
11 *that apply to an employee or individual shall*
12 *not apply to a volunteer who receives no com-*
13 *ensation.*

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

15 (A) *a person engaged in an industry affect-*
16 *ing commerce (as defined in section 701(h) of the*
17 *Civil Rights Act of 1964 (42 U.S.C. 2000e(h))*
18 *who has 15 or more employees (as defined in*
19 *subparagraphs (A)(i) and (B) of paragraph (4))*
20 *for each working day in each of 20 or more cal-*
21 *endar weeks in the current or preceding calendar*
22 *year, and any agent of such a person, but does*
23 *not include a bona fide private membership club*
24 *(other than a labor organization) that is exempt*

1 *from taxation under section 501(c) of the Inter-*
2 *nal Revenue Code of 1986;*

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

6 *(C) an employing office, as defined in sec-*
7 *tion 101 of the Congressional Accountability Act*
8 *of 1995 or section 411(c) of title 3, United States*
9 *Code; or*

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

12 (6) *EMPLOYMENT AGENCY.*—*The term “employ-*
13 *ment agency” has the meaning given the term in sec-*
14 *tion 701(c) of the Civil Rights Act of 1964 (42 U.S.C.*
15 *2000e(c)).*

16 (7) *GENDER IDENTITY.*—*The term “gender iden-*
17 *tity” means the gender-related identity, appearance,*
18 *or mannerisms or other gender-related characteristics*
19 *of an individual, with or without regard to the indi-*
20 *vidual’s designated sex at birth.*

21 (8) *LABOR ORGANIZATION.*—*The term “labor or-*
22 *ganization” has the meaning given the term in sec-*
23 *tion 701(d) of the Civil Rights Act of 1964 (42 U.S.C.*
24 *2000e(d)).*

1 (9) *PERSON*.—The term “person” has the mean-
2 ing given the term in section 701(a) of the Civil
3 Rights Act of 1964 (42 U.S.C. 2000e(a)).

4 (10) *SEXUAL ORIENTATION*.—The term “sexual
5 orientation” means homosexuality, heterosexuality, or
6 bisexuality.

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

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

13 (1) to an employee or an employer shall be con-
14 sidered to refer to an employee (as defined in sub-
15 section (a)(4)) or an employer (as defined in sub-
16 section (a)(5)), respectively, except as provided in
17 paragraph (2) of this subsection; and

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

21 **SEC. 4. EMPLOYMENT DISCRIMINATION PROHIBITED.**

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

24 (1) to fail or refuse to hire or to discharge any
25 individual, or otherwise discriminate against any in-

1 *dividual with respect to the compensation, terms, con-*
2 *ditions, or privileges of employment of the individual,*
3 *because of such individual's actual or perceived sexual*
4 *orientation or gender identity; or*

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

12 *(b) EMPLOYMENT AGENCY PRACTICES.—It shall be an*
13 *unlawful employment practice for an employment agency*
14 *to fail or refuse to refer for employment, or otherwise to*
15 *discriminate against, any individual because of the actual*
16 *or perceived sexual orientation or gender identity of the in-*
17 *dividual or to classify or refer for employment any indi-*
18 *vidual on the basis of the actual or perceived sexual orienta-*
19 *tion or gender identity 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 actual or perceived sexual orientation*
25 *or gender identity 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 actual or per-*
9 *ceived sexual orientation or gender identity; 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 actual or perceived sexual orientation*
19 *or gender identity of the individual in admission to, or em-*
20 *ployment in, any program established to provide appren-*
21 *ticeship or other training.*

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

1 *ceived sexual orientation or gender identity of a person with*
2 *whom the individual associates or has associated.*

3 (f) *NO PREFERENTIAL TREATMENT OR QUOTAS.—*

4 *Nothing in this Act shall be construed or interpreted to re-*
5 *quire or permit—*

6 (1) *any covered entity to grant preferential*
7 *treatment to any individual or to any group because*
8 *of the actual or perceived sexual orientation or gender*
9 *identity of such individual or group on account of an*
10 *imbalance which may exist with respect to the total*
11 *number or percentage of persons of any actual or per-*
12 *ceived sexual orientation or gender identity employed*
13 *by any employer, referred or classified for employ-*
14 *ment by any employment agency or labor organiza-*
15 *tion, admitted to membership or classified by any*
16 *labor organization, or admitted to, or employed in,*
17 *any apprenticeship or other training program, in*
18 *comparison with the total number or percentage of*
19 *persons of such actual or perceived sexual orientation*
20 *or gender identity in any community, State, section,*
21 *or other area, or in the available work force in any*
22 *community, State, section, or other area; or*

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

1 (g) *NO DISPARATE IMPACT CLAIMS.*—Only disparate
2 *treatment claims may be brought under this Act.*

3 (h) *STANDARDS OF PROOF.*—Except as otherwise pro-
4 *vided, an unlawful employment practice is established when*
5 *the complaining party demonstrates that sexual orientation*
6 *or gender identity was a motivating factor for any employ-*
7 *ment practice, even though other factors also motivated the*
8 *practice.*

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

10 *It shall be an unlawful employment practice for a cov-*
11 *ered entity to discriminate against an individual because*
12 *such individual—*

13 (1) *opposed any practice made an unlawful em-*
14 *ployment practice by this Act; or*

15 (2) *made a charge, testified, assisted, or partici-*
16 *ipated in any manner in an investigation, proceeding,*
17 *or hearing under this Act.*

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

19 *This Act shall not apply to a corporation, association,*
20 *educational institution or institution of learning, or society*
21 *that is exempt from the religious discrimination provisions*
22 *of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e*
23 *et seq.) pursuant to section 702(a) or 703(e)(2) of such Act*
24 *(42 U.S.C. 2000e-1(a), 2000e-2(e)(2)).*

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

3 (a) *ARMED FORCES.*—

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

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

10 (b) *VETERANS' PREFERENCES.*—*This title does not re-*
11 *peal or modify any Federal, State, territorial, or local law*
12 *creating a special right or preference concerning employ-*
13 *ment for a veteran.*

14 **SEC. 8. CONSTRUCTION.**

15 (a) *DRESS OR GROOMING STANDARDS.*—*Nothing in*
16 *this Act shall prohibit an employer from requiring an em-*
17 *ployee, during the employee's hours at work, to adhere to*
18 *reasonable dress or grooming standards not prohibited by*
19 *other provisions of Federal, State, or local law, provided*
20 *that the employer permits any employee who has undergone*
21 *gender transition prior to the time of employment, and any*
22 *employee who has notified the employer that the employee*
23 *has undergone or is undergoing gender transition after the*
24 *time of employment, to adhere to the same dress or groom-*
25 *ing standards as apply for the gender to which the employee*
26 *has transitioned or is transitioning.*

1 (b) *ADDITIONAL FACILITIES NOT REQUIRED.*—*Noth-*
 2 *ing in this Act shall be construed to require the construction*
 3 *of new or additional facilities.*

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

5 *The Commission and the Secretary of Labor shall nei-*
 6 *ther compel the collection of nor require the production of*
 7 *statistics on actual or perceived sexual orientation or gen-*
 8 *der identity from covered entities pursuant to this Act.*

9 **SEC. 10. ENFORCEMENT.**

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

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

15 (A) *title VII of the Civil Rights Act of 1964*

16 (42 U.S.C. 2000e et seq.); or

17 (B) *sections 302 and 304 of the Government*

18 *Employee Rights Act of 1991 (42 U.S.C. 2000e–*

19 *16b and 2000e–16c),*

20 *in the case of a claim alleged by such individual for*

21 *a violation of such title, or of section 302(a)(1) of the*

22 *Government Employee Rights Act of 1991 (42 U.S.C.*

23 *2000e–16b(a)(1)), respectively;*

24 (2) *the Librarian of Congress shall have the same*

25 *powers as the Librarian of Congress has to admin-*

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

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

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

15 *(A) title VII of the Civil Rights Act of 1964*

16 *(42 U.S.C. 2000e et seq.); or*

17 *(B) sections 302 and 304 of the Government*

18 *Employee Rights Act of 1991 (42 U.S.C. 2000e–*

19 *16b and 2000e–16c);*

20 *in the case of a claim alleged by such individual for*
21 *a violation of such title, or of section 302(a)(1) of the*
22 *Government Employee Rights Act of 1991 (42 U.S.C.*
23 *2000e–16b(a)(1)), respectively;*

24 *(5) the President, the Commission, and the Merit*
25 *Systems Protection Board shall have the same powers*

1 *as the President, the Commission, and the Board, re-*
2 *spectively, have to administer and enforce chapter 5*
3 *of title 3, United States Code, in the case of a claim*
4 *alleged by such individual for a violation of section*
5 *411 of such title; and*

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

9 *(A) title VII of the Civil Rights Act of 1964*
10 *(42 U.S.C. 2000e et seq.) in the case of a claim*
11 *alleged by such individual for a violation of such*
12 *title;*

13 *(B) sections 302 and 304 of the Government*
14 *Employee Rights Act of 1991 (42 U.S.C. 2000e–*
15 *16b and 2000e–16c) in the case of a claim al-*
16 *leged by such individual for a violation of sec-*
17 *tion 302(a)(1) of such Act (42 U.S.C. 2000e–*
18 *16b(a)(1));*

19 *(C) the Congressional Accountability Act of*
20 *1995 (2 U.S.C. 1301 et seq.) in the case of a*
21 *claim alleged by such individual for a violation*
22 *of section 201(a)(1) of such Act (2 U.S.C.*
23 *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.*—Except as pro-
5 vided in section 4(g), the procedures and remedies applica-
6 ble to a claim alleged by an individual for a violation of
7 this Act are—

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

12 (2) the procedures and remedies applicable for a
13 violation of section 302(a)(1) of the Government Em-
14 ployee Rights Act of 1991 (42 U.S.C. 2000e–
15 16b(a)(1)) in the case of a claim alleged by such indi-
16 vidual for a violation of such section;

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

22 (4) the procedures and remedies applicable for a
23 violation of section 411 of title 3, United States Code,
24 in the case of a claim alleged by such individual for
25 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) *NO DOUBLE RECOVERY.*—An individual who files
11 claims alleging that a practice is an unlawful employment
12 practice under this Act and an unlawful employment prac-
13 tice because of sex under title VII of the Civil Rights Act
14 of 1964 (42 U.S.C. 2000e et seq.) shall not be permitted
15 to recover damages for such practice under both of—

16 (1) this Act; and

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

20 (e) *MOTIVATING FACTOR DECISIONS.*—On a claim in
21 which an individual proved a violation under section 4(h)
22 and a respondent demonstrates that the respondent would
23 have taken the same action in the absence of the impermis-
24 sible motivating factor, the court—

1 (1) *may grant declaratory relief, injunctive relief*
2 *(except as provided in paragraph (2)), and attorney’s*
3 *fees and costs demonstrated to be directly attributable*
4 *only to the pursuit of a claim under section 4(h); and*

5 (2) *shall not award damages or issue an order*
6 *requiring any admission, reinstatement, hiring, pro-*
7 *motion, or payment.*

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

9 (a) *ABROGATION OF STATE IMMUNITY.—A State shall*
10 *not be immune under the 11th Amendment to the Constitu-*
11 *tion from a suit brought in a Federal court of competent*
12 *jurisdiction for a violation of this Act.*

13 (b) *WAIVER OF STATE IMMUNITY.—*

14 (1) *IN GENERAL.—*

15 (A) *WAIVER.—A State’s receipt or use of*
16 *Federal financial assistance for any program or*
17 *activity of a State shall constitute a waiver of*
18 *sovereign immunity, under the 11th Amendment*
19 *to the Constitution or otherwise, to a suit*
20 *brought by an employee or applicant for employ-*
21 *ment of that program or activity under this Act*
22 *for a remedy authorized under subsection (d).*

23 (B) *DEFINITION.—In this paragraph, the*
24 *term “program or activity” has the meaning*

1 *given the term in section 606 of the Civil Rights*
2 *Act of 1964 (42 U.S.C. 2000d–4a).*

3 (2) *EFFECTIVE DATE.*—*With respect to a par-*
4 *ticular program or activity, paragraph (1) applies to*
5 *conduct occurring on or after the day, after the date*
6 *of enactment of this Act, on which a State first re-*
7 *ceives or uses Federal financial assistance for that*
8 *program or activity.*

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

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

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

5 **SEC. 12. ATTORNEYS' FEES.**

6 (a) *DEFINITION.*—*For purposes of this section, the*
7 *term “decisionmaker” means an entity described in section*
8 *10(a) (other than paragraph (4) of such section), acting in*
9 *the discretion of the entity.*

10 (b) *AUTHORITY.*—*Notwithstanding any other provi-*
11 *sion of this Act, in an action or administrative proceeding*
12 *for a violation of this Act, a decisionmaker may allow the*
13 *prevailing party, other than the Commission or the United*
14 *States, a reasonable attorney’s fee (including expert fees)*
15 *as part of the costs, to the same extent as is permitted under*
16 *title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e*
17 *et seq.), sections 302 and 304 of the Government Employee*
18 *Rights Act of 1991 (42 U.S.C. 2000e–16b and 2000e–16c),*
19 *the Congressional Accountability Act of 1995 (2 U.S.C.*
20 *1301 et seq.), or chapter 5 of title 3, United States Code,*
21 *whichever applies to the prevailing party in that action or*
22 *proceeding. The Commission and the United States shall*
23 *be liable for the costs to the same extent as a private person.*

1 **SEC. 13. POSTING NOTICES.**

2 *A covered entity who is required to post a notice de-*
3 *scribed in section 711 of the Civil Rights Act of 1964 (42*
4 *U.S.C. 2000e-10) may be required to post an amended no-*
5 *tice, including a description of the applicable provisions of*
6 *this Act, in the manner prescribed by, and subject to the*
7 *penalty provided under, section 711 of the Civil Rights Act*
8 *of 1964. Nothing in this Act shall be construed to require*
9 *a separate notice to be posted.*

10 **SEC. 14. REGULATIONS.**

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

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

18 *(c) BOARD.—The Board referred to in section 10(a)(3)*
19 *shall have authority to issue regulations to carry out this*
20 *Act, in accordance with section 304 of the Congressional*
21 *Accountability Act of 1995 (2 U.S.C. 1384), with respect*
22 *to covered employees, as defined in section 101 of such Act*
23 *(2 U.S.C. 1301).*

24 *(d) PRESIDENT.—The President shall have authority*
25 *to issue regulations to carry out this Act with respect to*
26 *covered employees, as defined in section 411(c) of title 3,*

1 *United States Code, and applicants for employment as such*
2 *employees.*

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

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

9 **SEC. 16. SEVERABILITY.**

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

15 **SEC. 17. EFFECTIVE DATE.**

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

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113TH CONGRESS
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S. 815

[Report No. 113-105]

A BILL

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

SEPTEMBER 12, 2013

Reported with an amendment