

Calendar No. 479

110TH CONGRESS  
1ST SESSION

**H. R. 3685**

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IN THE SENATE OF THE UNITED STATES

NOVEMBER 8, 2007

Received; read the first time

NOVEMBER 13, 2007

Read the second time and placed on the calendar

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**AN ACT**

To prohibit employment discrimination on the basis of sexual orientation.

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

3 **SECTION 1. SHORT TITLE.**

4        This Act may be cited as the “Employment Non-Dis-  
5 crimination Act of 2007”.

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;

1           (2) to provide meaningful and effective remedies for employment discrimination on the basis of  
2 sexual orientation; and  
3

4           (3) to invoke congressional powers, including  
5 the powers to enforce the 14th amendment to the  
6 Constitution, and to regulate interstate commerce  
7 and provide for the general welfare pursuant to section 8 of article I of the Constitution, in order to  
8 prohibit employment discrimination on the basis of  
9 sexual orientation.  
10

11 **SEC. 3. DEFINITIONS.**

12       (a) IN GENERAL.—In this Act:

13           (1) COMMISSION.—The term “Commission”  
14 means the Equal Employment Opportunity Commission.  
15

16           (2) COVERED ENTITY.—The term “covered entity” means an employer, employment agency, labor  
17 organization, or joint labor-management committee.  
18

19           (3) EMPLOYEE.—

20               (A) IN GENERAL.—the term “employee”  
21 means—

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

1 (ii) a Presidential appointee or State  
2 employee to which section 302(a)(1) of the  
3 Government Employee Rights Act of 1991  
4 (42 U.S.C. 2000e–16(a)(1) applies;

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

10 (iv) an employee or applicant to which  
11 section 717(a) of the Civil Rights Act of  
12 1964 (42 U.S.C. 2000e–16(a)) applies.

13 (B) EXCEPTION.—The provisions of this  
14 Act that apply to an employee or individual  
15 shall not apply to a volunteer who receives no  
16 compensation.

17 (4) EMPLOYER.—The term “employer”  
18 means—

19 (A) a person engaged in an industry affect-  
20 ing commerce (as defined in section (701)(h) of  
21 the Civil Rights Act of 1964 (42 U.S.C.  
22 2000e(h)) who has 15 or more employees (as  
23 defined in subparagraphs (A)(i) and (B) of  
24 paragraph (3)) for each working day in each of  
25 20 or more calendar weeks in the current or

1 preceding calendar year, and any agent of such  
2 a person, but does not include a bona fide pri-  
3 vate membership club (other than a labor orga-  
4 nization) that is exempt from taxation under  
5 section 501(c) of the Internal Revenue Code of  
6 1986;

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

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

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

16 (5) EMPLOYMENT AGENCY.—The term “em-  
17 ployment agency” has the meaning given the term in  
18 section 701(c) of the Civil Rights Act of 1964 (42  
19 U.S.C. 2000e(c)).

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

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

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

7           (9) STATE.—The term “State” has the mean-  
8 ing given the term in section 701(i) of the Civil  
9 Rights 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 para-  
15 graph (3)) or an employer (as defined in paragraph  
16 (4)), respectively, except as provided in paragraph  
17 (2) below; 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 paragraph (4)(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,  
2       conditions, or privileges of employment of the indi-  
3       vidual, because of such individual's actual or per-  
4       ceived sexual orientation; 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  
9       the status of the individual as an employee, because  
10      of such individual's actual or perceived sexual ori-  
11      entation.

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

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

23               (1) to exclude or to expel from its membership,  
24      or otherwise to discriminate against, any individual

1 because of the actual or perceived sexual orientation  
2 of the individual;

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

12 (3) to cause or attempt to cause an employer to  
13 discriminate against an individual in violation of this  
14 section.

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

24 (e) ASSOCIATION.—An unlawful employment practice  
25 described in any of subsections (a) through (d) shall be

1 considered to include an action described in that sub-  
2 section, taken against an individual based on the actual  
3 or perceived sexual orientation of a person with whom the  
4 individual associates or has associated.

5 (f) NO PREFERENTIAL TREATMENT OR QUOTAS.—

6 Nothing in this Act shall be construed or interpreted to  
7 require or permit—

8 (1) any covered entity to grant preferential  
9 treatment to any individual or to any group because  
10 of the actual or perceived sexual orientation of such  
11 individual or group on account of an imbalance  
12 which may exist with respect to the total number or  
13 percentage of persons of any actual or perceived sex-  
14 ual orientation employed by any employer, referred  
15 or classified for employment by any employment  
16 agency or labor organization, admitted to member-  
17 ship or classified by any labor organization, or ad-  
18 mitted to, or employed in, any apprenticeship or  
19 other training program, in comparison with the total  
20 number or percentage of persons of such actual or  
21 perceived sexual orientation in any community,  
22 State, section, or other area, or in the available work  
23 force in any community, State, section, or other  
24 area; or



1       tween the United States and members of the Armed  
2       Forces.

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

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

10 **SEC. 8. CONSTRUCTION.**

11       (a) EMPLOYER RULES AND POLICIES.—

12               (1) IN GENERAL.—Nothing in this Act shall be  
13       construed to prohibit a covered entity from enforcing  
14       rules and policies that do not intentionally cir-  
15       cumvent the purposes of this Act, if the rules or  
16       policies are designed for, and uniformly applied to,  
17       all individuals regardless of actual or perceived sex-  
18       ual orientation.

19               (2) SEXUAL HARASSMENT.—Nothing in this  
20       Act shall be construed to limit a covered entity from  
21       taking adverse action against an individual because  
22       of a charge of sexual harassment against that indi-  
23       vidual, provided that rules and policies on sexual  
24       harassment, including when adverse action is taken,  
25       are designed for, and uniformly applied to, all indi-

1       viduals regardless of actual or perceived sexual ori-  
2       entation.

3       (b) EMPLOYEE BENEFITS.—Nothing in this Act shall  
4       be construed to require a covered entity to treat a couple  
5       who are not married in the same manner as the covered  
6       entity treats a married couple for purposes of employee  
7       benefits.

8       (c) DEFINITION OF MARRIAGE.—As used in this Act,  
9       the term “married” or “marry” refer to marriage as such  
10      term is defined in section 7 of title I, United States Code  
11      (referred to as the Defense of Marriage Act).

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

13      The Commission shall not collect statistics on actual  
14      or perceived sexual orientation from covered entities, or  
15      compel the collection of such statistics by covered entities.

16      **SEC. 10. ENFORCEMENT.**

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

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

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

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

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

14 (3) the Board (as defined in section 101 of the  
15 Congressional Accountability Act of 1995 (2 U.S.C.  
16 1301)) shall have the same powers as the Board has  
17 to administer and enforce the Congressional Ac-  
18 countability Act of 1995 (2 U.S.C. 1301 et seq.) in  
19 the case of a claim alleged by such individual for a  
20 violation of section 201(a)(1) of such Act (2 U.S.C.  
21 1311(a)(1));

22 (4) the Attorney General shall have the same  
23 powers as the Attorney General has to administer  
24 and enforce—

1 (A) title VII of the Civil Rights Act of  
2 1964 (42 U.S.C. 2000e et seq.); or

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);

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

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

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

20 (A) title VII of the Civil Rights Act of  
21 1964 (42 U.S.C. 2000e et seq.) in the case of  
22 a claim alleged by such individual for a viola-  
23 tion of such title;

24 (B) sections 302 and 304 of the Govern-  
25 ment Employee Rights Act of 1991 (42 U.S.C.

1           2000e–16b and 2000e–16c) in the case of a  
2           claim alleged by such individual for a violation  
3           of section 302(a)(1) of such Act (42 U.S.C.  
4           2000e–16b(a)(1));

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

10          (D) chapter 5 of title 3, United States  
11          Code, in the case of a claim alleged by such in-  
12          dividual for a violation of section 411 of such  
13          title.

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

17               (1) the procedures and remedies applicable for  
18               a violation of title VII of the Civil Rights Act of  
19               1964 (42 U.S.C. 2000e et seq.) in the case of a  
20               claim alleged by such individual for a violation of  
21               such title;

22               (2) the procedures and remedies applicable for  
23               a violation of section 302(a)(1) of the Government  
24               Employee Rights Act of 1991 (2 U.S.C. 1202(a)(1))

1 in the case of a claim alleged by such individual for  
2 a violation of such section;

3 (3) the procedures and remedies applicable for  
4 a violation of section 201(a)(1) of the Congressional  
5 Accountability Act of 1995 (2 U.S.C. 1311(a)(1)) in  
6 the case of a claim alleged by such individual for a  
7 violation of such section; and

8 (4) the procedures and remedies applicable for  
9 a violation of section 411 of title 3, United States  
10 Code, in the case of a claim alleged by such indi-  
11 vidual for a violation of such section.

12 (c) OTHER APPLICABLE PROVISIONS.—With respect  
13 to a claim alleged by a covered employee (as defined in  
14 section 101 of the Congressional Accountability Act of  
15 1995 (2 U.S.C. 1301)) for a violation of this Act, title  
16 III of the Congressional Accountability Act of 1995 (2  
17 U.S.C. 1381 et seq.) shall apply in the same manner as  
18 such title applies with respect to a claim alleged by such  
19 a covered employee for a violation of section 201(a)(1) of  
20 such Act (2 U.S.C. 1311(a)(1)).

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

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

1 (b) REMEDIES FOR STATE EMPLOYEES.—

2 (1) IN GENERAL.—

3 (A) WAIVER.—A State’s receipt or use of  
4 Federal financial assistance for any program or  
5 activity of a State shall constitute a waiver of  
6 sovereign immunity, under the 11th amendment  
7 to the Constitution or otherwise, to a suit  
8 brought by an employee or applicant for em-  
9 ployment of that program or activity under this  
10 Act for a remedy authorized under subsection  
11 (c).

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

16 (2) OFFICIALS.—An official of a State may be  
17 sued in the official capacity of the official by any  
18 employee or applicant for employment who has com-  
19 plied with the applicable procedures of section 10,  
20 for equitable relief that is authorized under this Act.  
21 In such a suit the court may award to the prevailing  
22 party those costs authorized by section 722 of the  
23 Revised Statutes of the United States (42 U.S.C.  
24 1988).

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

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

16           (1) punitive damages are not available; and

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

20 **SEC. 12. ATTORNEYS' FEES.**

21           Notwithstanding any other provision of this Act, in  
22 an action or administrative proceeding for a violation of  
23 this Act, an entity described in section 10(a) (other than  
24 paragraph (4) of such section), in the discretion of the  
25 entity, may allow the prevailing party, other than the

1 Commission or the United States, a reasonable attorney's  
2 fee (including expert fees) as part of the costs. The Com-  
3 mission and the United States shall be liable for the costs  
4 to the same extent as a private person.

5 **SEC. 13. POSTING NOTICES.**

6 A covered entity who is required to post notices de-  
7 scribed in section 711 of the Civil Rights Act of 1964 (42  
8 U.S.C. 2000e–10) shall post notices for employees, appli-  
9 cants for employment, and members, to whom the provi-  
10 sions specified in section 10(b) apply, that describe the  
11 applicable provisions of this Act in the manner prescribed  
12 by, and subject to the penalty provided under, section 711  
13 of the Civil Rights Act of 1964.

14 **SEC. 14. REGULATIONS.**

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

18 (b) LIBRARIAN OF CONGRESS.—The Librarian of  
19 Congress shall have authority to issue regulations to carry  
20 out this Act with respect to employees and applicants for  
21 employment of the Library of Congress.

22 (c) BOARD.—The Board referred to in section  
23 10(a)(3) shall have authority to issue regulations to carry  
24 out this Act, in accordance with section 304 of the Con-  
25 gressional Accountability Act of 1995 (2 U.S.C. 1384),

1 with respect to covered employees, as defined in section  
2 101 of such Act (2 U.S.C. 1301).

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

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

8 This Act shall not invalidate or limit the rights, rem-  
9 edies, or procedures available to an individual claiming  
10 discrimination prohibited under any other Federal law or  
11 regulation or any law or regulation of a State or political  
12 subdivision of a State.

13 **SEC. 16. SEVERABILITY.**

14 If any provision of this Act, or the application of the  
15 provision to any person or circumstance, is held to be in-  
16 valid, the remainder of this Act and the application of the  
17 provision to any other person or circumstances shall not  
18 be affected by the invalidity.

19 **SEC. 17. EFFECTIVE DATE.**

20 This Act shall take effect 6 months after the date  
21 of the enactment of this Act and shall not apply to conduct  
22 occurring before the effective date.

Passed the House of Representatives November 7,  
2007.

Attest: LORRAINE C. MILLER,  
*Clerk.*

Calendar No. 479

110<sup>TH</sup> CONGRESS  
1<sup>ST</sup> Session

**H. R. 3685**

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**AN ACT**

To prohibit employment discrimination on the basis  
of sexual orientation.

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NOVEMBER 13, 2007

Read the second time and placed on the calendar