

103D CONGRESS  
2D SESSION

# S. 2238

To prohibit employment discrimination on the basis of sexual orientation.

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## IN THE SENATE OF THE UNITED STATES

JUNE 23 (legislative day, JUNE 7), 1994

Mr. KENNEDY (for himself, Mr. CHAFEE, Mr. AKAKA, Mr. JEFFORDS, Mr. BINGAMAN, Mr. PACKWOOD, Mrs. BOXER, Mr. BRADLEY, Mr. DODD, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. GLENN, Mr. HARKIN, Mr. INOUE, Mr. KERRY, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Mr. LIEBERMAN, Mr. METZENBAUM, Ms. MIKULSKI, Ms. MOSELEY-BRAUN, Mr. MOYNIHAN, Mrs. MURRAY, Mr. PELL, Mr. RIEGLE, Mr. ROBB, Mr. SARBANES, Mr. SIMON, and Mr. WELLSTONE) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

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## A BILL

To prohibit employment discrimination on the basis of sexual orientation.

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

### 3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Employment Non-  
5 Discrimination Act of 1994”.

### 6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—The Congress finds that—

1           (1) an individual's sexual orientation bears no  
2           relationship to the individual's ability to contribute  
3           fully to the economic and civic life of society;

4           (2) historically, American society has tended to  
5           isolate, stigmatize, and persecute gay men, lesbians,  
6           and bisexuals;

7           (3) one of the main areas in which gay men,  
8           lesbians, and bisexuals face discrimination is employ-  
9           ment;

10          (4) employment discrimination on the basis of  
11          sexual orientation violates fundamental American  
12          values of equality and fairness;

13          (5) the continuing existence of employment dis-  
14          crimination on the basis of sexual orientation denies  
15          gay men, lesbians, and bisexuals equal opportunity  
16          in the workplace and affects interstate commerce;

17          (6) individuals who have experienced employ-  
18          ment discrimination on the basis of sexual orienta-  
19          tion often lack recourse under Federal law; and

20          (7) gay men, lesbians, and bisexuals have  
21          historically been excluded from full participation in  
22          the political process, comprise a discrete and insular  
23          minority, and have historically been subjected to  
24          purposeful unequal treatment based on characteris-

1       tics not indicative of their ability to participate in or  
2       contribute to society.

3       (b) PURPOSES.—It is the purpose of this Act—

4           (1) to provide a comprehensive Federal prohibi-  
5       tion of employment discrimination on the basis of  
6       sexual orientation;

7           (2) to provide meaningful and effective rem-  
8       edies for employment discrimination on the basis of  
9       sexual orientation; and

10          (3) to invoke congressional powers, including  
11       the powers to enforce the 14th amendment to the  
12       Constitution and to regulate commerce, in order to  
13       prohibit employment discrimination on the basis of  
14       sexual orientation.

15   **SEC. 3. DISCRIMINATION PROHIBITED.**

16       A covered entity, in connection with employment or  
17       employment opportunities, shall not—

18          (1) subject an individual to different standards  
19       or treatment on the basis of sexual orientation;

20          (2) discriminate against an individual based on  
21       the sexual orientation of persons with whom such in-  
22       dividual is believed to associate or to have associ-  
23       ated; or

24          (3) otherwise discriminate against an individual  
25       on the basis of sexual orientation.

1 **SEC. 4. BENEFITS.**

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

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

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

11 **SEC. 6. QUOTAS AND PREFERENTIAL TREATMENT PROHIB-**  
12 **ITED.**

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

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

18 **SEC. 7. RELIGIOUS EXEMPTION.**

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

21 (b) FOR-PROFIT ACTIVITIES.—This Act shall apply  
22 to a religious organization’s for-profit activities subject to  
23 taxation under section 511(a) of the Internal Revenue  
24 Code of 1986 as in effect on the date of the enactment  
25 of this Act.

1 **SEC. 8. NON-APPLICATION TO MEMBERS OF THE ARMED**  
2 **FORCES; VETERANS' PREFERENCES.**

3 (a) ARMED FORCES.—

4 (1) For purposes of this Act, the term “employ-  
5 ment or employment opportunities” does not apply  
6 to the relationship between the United States and  
7 members of the Armed Forces.

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

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

14 **SEC. 9. ENFORCEMENT.**

15 (a) ENFORCEMENT POWERS.—With respect to the  
16 administration and enforcement of this Act—

17 (1) the Commission and the Librarian of Con-  
18 gress shall have the same powers, respectively, as  
19 the Commission and the Librarian of Congress have  
20 to administer and enforce title VII of the Civil  
21 Rights Act of 1964 (42 U.S.C. 2000e et seq.);

22 (2) the Attorney General of the United States  
23 shall have the same powers as the Attorney General  
24 has to administer and enforce such title; and

25 (3) the district courts of the United States shall  
26 have the same jurisdiction and powers as such

1 courts have to enforce such title and section 309 of  
2 the Civil Rights Act of 1991 (2 U.S.C. 1209).

3 (b) PROCEDURES AND REMEDIES.—The procedures  
4 and remedies applicable to a claim for a violation of this  
5 Act are as follows:

6 (1) For a violation alleged by an individual,  
7 other than an individual specified in paragraph (2)  
8 or (3), the procedures and remedies applicable to a  
9 claim brought by an individual for a violation of title  
10 VII of the Civil Rights Act of 1964 (42 U.S.C.  
11 2000e et seq.) shall apply.

12 (2) For a violation alleged by an employee of  
13 the House of Representatives or of an instrumental-  
14 ity of the Congress, the procedures and remedies ap-  
15 plicable to a claim by such employee for a violation  
16 of section 117 of the Civil Rights Act of 1991 (2  
17 U.S.C. 60l) shall apply.

18 (3) For a violation alleged by an employee of  
19 the Senate, the procedures and remedies applicable  
20 to a claim by such employee for a violation of section  
21 302 of the Civil Rights Act of 1991 (2 U.S.C. 1202)  
22 shall apply.

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

24 (a) STATE IMMUNITY.—A State shall not be immune  
25 under the 11th amendment to the Constitution of the

1 United States from an action in a Federal court of com-  
2 petent jurisdiction for a violation of this Act. In an action  
3 against a State for a violation of this Act, remedies (in-  
4 cluding remedies at law and in equity) are available for  
5 the violation to the same extent as such remedies are avail-  
6 able in an action against any public or private entity other  
7 than a State.

8 (b) LIABILITY OF THE UNITED STATES.—The Unit-  
9 ed States shall be liable for all remedies under this Act  
10 to the same extent as a private person and shall be liable  
11 to the same extent as a nonpublic party for interest to  
12 compensate for delay in payment.

13 **SEC. 11. ATTORNEYS' FEES.**

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

21 **SEC. 12. RETALIATION AND COERCION PROHIBITED.**

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

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

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

8 **SEC. 13. POSTING NOTICES.**

9 A covered entity shall post notices for employees, ap-  
10 plicants for employment, and members describing the ap-  
11 plicable provisions of this Act, in the manner prescribed  
12 by, and subject to the penalty provided under, section 711  
13 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–10).

14 **SEC. 14. REGULATIONS.**

15 The Commission shall have the authority to issue reg-  
16 ulations to carry out this Act.

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

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

22 **SEC. 16. SEVERABILITY.**

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



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

3 **SEC. 17. EFFECTIVE DATE.**

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

7 **SEC. 18. DEFINITIONS.**

8 As used in this Act—

9 (1) the term “commerce” has the meaning  
10 given such term in section 701(g) of the Civil Rights  
11 Act of 1964 (42 U.S.C. 2000e(g));

12 (2) the term “Commission” means the Equal  
13 Employment Opportunity Commission established by  
14 section 705 of the Civil Rights Act of 1964 (42  
15 U.S.C. 2000e-4);

16 (3) the term “covered entity” means an em-  
17 ployer, employment agency, labor organization, joint  
18 labor-management committee, an entity to which  
19 section 717(a) of the Civil Rights Act of 1964 (42  
20 U.S.C. 2000e(a)) applies, an employing authority of  
21 the House of Representatives, an employing office of  
22 the Senate, or an instrumentality of the Congress;

23 (4) the term “employee of the Senate” has the  
24 meaning given such term in section 301(c) of the  
25 Civil Rights Act of 1991 (2 U.S.C. 1201(c));

1           (5) the term “employer” has the meaning given  
2           such term in section 701(b) of the Civil Rights Act  
3           of 1964 (42 U.S.C. 2000e(b));

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

7           (7) the term “employment or employment op-  
8           portunities” includes job application procedures, hir-  
9           ing, advancement, discharge, compensation, job  
10          training, or any other term, condition, or privilege of  
11          employment;

12          (8) the term “instrumentalities of the Con-  
13          gress” has the meaning given such term in section  
14          117(b)(4) of the Civil Rights Act of 1991 (2 U.S.C.  
15          601(b)(4));

16          (9) the term “labor organization” has the  
17          meaning given such term in section 701(d) of the  
18          Civil Rights Act of 1964 (42 U.S.C. 2000e(d));

19          (10) the term “person” has the meaning given  
20          such term in section 701(a) of the Civil Rights Act  
21          of 1964 (42 U.S.C. 2000e(a));

22          (11) the term “religious organization” means—

23                (A) a religious corporation, association, or  
24                society; or

1 (B) a college, school, university, or other  
2 educational institution, not otherwise a religious  
3 organization, if—

4 (i) it is in whole or substantial part  
5 controlled, managed, owned, or supported  
6 by a religious corporation, association, or  
7 society; or

8 (ii) its curriculum is directed toward  
9 the propagation of a particular religion;

10 (12) the term “sexual orientation” means les-  
11 bian, gay, bisexual, or heterosexual orientation, real  
12 or perceived, as manifested by identity, acts, state-  
13 ments, or associations; and

14 (13) the term “State” has the meaning given  
15 such term in section 701(i) of the Civil Rights Act  
16 of 1964 (42 U.S.C. 2000e(i)).

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