

104TH CONGRESS
1ST SESSION

S. 932

To prohibit employment discrimination on the basis of sexual orientation.

IN THE SENATE OF THE UNITED STATES

JUNE 15 (legislative day, JUNE 5), 1995

Mr. JEFFORDS (for himself, Mr. KENNEDY, Mr. CHAFEE, Mr. AKAKA, Mr. BINGAMAN, Mrs. BOXER, Mr. BRADLEY, Mr. DODD, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. GLENN, Mr. HARKIN, Mr. INOUE, Mr. KERREY, Mr. KERRY, Mr. KOHL, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Mr. LIEBERMAN, Ms. MIKULSKI, Ms. MOSELEY-BRAUN, Mr. MOYNIHAN, Mrs. MURRAY, Mr. PACKWOOD, Mr. PELL, 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

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 1995”.

6 **SEC. 2. PURPOSES.**

7 It is the purpose of this Act—

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

4 (2) to provide meaningful and effective rem-
5 edies for employment discrimination on the basis of
6 sexual orientation; and

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

12 **SEC. 3. DEFINITIONS.**

13 As used in this Act:

14 (1) COMMISSION.—The term “Commission”
15 means the Equal Employment Opportunity Commis-
16 sion.

17 (2) COVERED ENTITY.—The term “covered en-
18 tity” means an employer, employment agency, labor
19 organization, joint labor management committee, an
20 entity to which section 717(a) of the Civil Rights
21 Act of 1964 (42 U.S.C. 2000e–16(a)) applies, an
22 employing authority to which section 302(a)(1) of
23 the Government Employee Rights Act of 1991 (2
24 U.S.C. 1202(a)(1)) applies, or an employing author-

1 ity to which section 201(a) of the Congressional Ac-
2 countability Act of 1995 (2 U.S.C. 1311(a)) applies.

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

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

10 (5) EMPLOYMENT OR EMPLOYMENT OPPORTU-
11 NITIES.—Except as provided in section 9(a)(1), the
12 term “employment or employment opportunities” in-
13 cludes job application procedures, hiring, advance-
14 ment, discharge, compensation, job training, or any
15 other term, condition, or privilege of employment.

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

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

23 (8) RELIGIOUS ORGANIZATION.—The term “re-
24 ligious organization” means—

1 (A) a religious corporation, association, or
2 society; or

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

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

10 (ii) its curriculum is directed toward
11 the propagation of a particular religion.

12 (9) SEXUAL ORIENTATION.—The term “sexual
13 orientation” means homosexuality, bisexuality, or
14 heterosexuality, whether such orientation is real or
15 perceived.

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

19 **SEC. 4. DISCRIMINATION PROHIBITED.**

20 A covered entity, in connection with employment or
21 employment opportunities, shall not—

22 (1) subject an individual to a different standard
23 or different treatment on the basis of sexual orienta-
24 tion;

1 (2) discriminate against an individual based on
2 the sexual orientation of a person with whom such
3 individual is believed to associate or to have associ-
4 ated; or

5 (3) otherwise discriminate against an individual
6 on the basis of sexual orientation.

7 **SEC. 5. BENEFITS.**

8 This Act does not apply to the provision of employee
9 benefits to an individual for the benefit of such individ-
10 ual's partner.

11 **SEC. 6. NO DISPARATE IMPACT.**

12 The fact that an employment practice has a disparate
13 impact, as the term "disparate impact" is used in section
14 703(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-
15 2(k)), on the basis of sexual orientation does not establish
16 a prima facie violation of this Act.

17 **SEC. 7. QUOTAS AND PREFERENTIAL TREATMENT PROHIB-**
18 **ITED.**

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

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

1 **SEC. 8. RELIGIOUS EXEMPTION.**

2 (a) IN GENERAL.—Except as provided in subsection
3 (b), this Act shall not apply to a religious organization.

4 (b) FOR-PROFIT ACTIVITIES.—This Act shall apply
5 with respect to employment and employment opportunities
6 that relate to any employment position that pertains solely
7 to a religious organization’s for-profit activities subject to
8 taxation under section 511(a) of the Internal Revenue
9 Code of 1986.

10 **SEC. 9. NONAPPLICATION TO MEMBERS OF THE ARMED**
11 **FORCES; VETERANS’ PREFERENCES.**

12 (a) ARMED FORCES.—

13 (1) EMPLOYMENT OR EMPLOYMENT OPPORTU-
14 NITIES.—For purposes of this Act, the term “em-
15 ployment or employment opportunities” does not
16 apply to the relationship between the United States
17 and members of the Armed Forces.

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

21 (b) VETERANS’ PREFERENCES.—This Act does not
22 repeal or modify any Federal, State, territorial, or local
23 law creating a special right or preference for a veteran.

24 **SEC. 10. ENFORCEMENT.**

25 (a) ENFORCEMENT POWERS.—With respect to the
26 administration and enforcement of this Act in the case of

1 a claim alleged by an individual for a violation of this
2 Act—

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

5 (A) title VII of the Civil Rights Act of
6 1964 (42 U.S.C. 2000e et seq.); or

7 (B) sections 302, 303, and 304 of the Gov-
8 ernment Employee Rights Act of 1991 (2
9 U.S.C. 1202, 1203, and 1204);

10 in the case of a claim alleged by such individual for
11 a violation of such title or of section 302(a)(1) of
12 such Act, respectively;

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

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

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, 303, and 304 of the Gov-
7 ernment Employee Rights Act of 1991 (2
8 U.S.C. 1202, 1203, and 1204);

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 such Act, respectively; and

12 (5) a court of the United States shall have the
13 same jurisdiction and powers as such court has to
14 enforce—

15 (A) title VII of the Civil Rights Act of
16 1964 (42 U.S.C. 2000e et seq.) in the case of
17 a claim alleged by such individual for a viola-
18 tion of such title;

19 (B) sections 302, 303, and 304 of the Gov-
20 ernment Employee Rights Act of 1991 (2
21 U.S.C. 1202, 1203, and 1204) in the case of a
22 claim alleged by such individual for a violation
23 of section 302(a)(1) of such Act; and

24 (C) the Congressional Accountability Act
25 of 1995 (2 U.S.C. 1301 et seq.) in the case of

1 a claim alleged by such individual for a viola-
2 tion of section 201(a)(1) of such Act.

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 (2 U.S.C. 1202(a)(1))
14 in the case of a claim alleged by such individual for
15 a violation of such section; and

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.

21 (c) OTHER APPLICABLE PROVISIONS.—With respect
22 to claims alleged by a covered employee (as defined in sec-
23 tion 101 of the Congressional Accountability Act of 1995
24 (2 U.S.C. 1301)) for a violation of this Act, title III of
25 the Congressional Accountability Act of 1995 shall apply

1 in the same manner as such title applies with respect to
2 a claim alleged by such a covered employee for a violation
3 of section 201(a)(1) of such Act.

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

5 (a) STATE IMMUNITY.—A State shall not be immune
6 under the eleventh amendment to the Constitution of the
7 United States from an action in a Federal court of com-
8 petent jurisdiction for a violation of this Act. In an action
9 against a State for a violation of this Act, remedies (in-
10 cluding remedies at law and in equity) are available for
11 the violation to the same extent as such remedies are avail-
12 able in an action against any public or private entity other
13 than a State.

14 (b) LIABILITY OF THE UNITED STATES.—The Unit-
15 ed States shall be liable for all remedies (excluding puni-
16 tive damages) under this Act to the same extent as a pri-
17 vate person and shall be liable to the same extent as a
18 nonpublic party for interest to compensate for delay in
19 payment.

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

21 In any action or administrative proceeding com-
22 menced pursuant to this Act, the court or the Commission,
23 in its discretion, may allow the prevailing party, other
24 than the United States, a reasonable attorney's fee, in-
25 cluding expert fees and other litigation expenses, and

1 costs. The United States shall be liable for the fees, ex-
2 penses and costs described in the preceding sentence the
3 same as a private person.

4 **SEC. 13. RETALIATION AND COERCION PROHIBITED.**

5 (a) RETALIATION.—A covered entity shall not dis-
6 criminate against an individual because such individual
7 opposed any act or practice prohibited by this Act or be-
8 cause such individual made a charge, assisted, testified,
9 or participated in any manner in an investigation, proceed-
10 ing, or hearing under this Act.

11 (b) COERCION.—A person shall not coerce, intimi-
12 date, threaten, or interfere with any individual in the exer-
13 cise or enjoyment of, or on account of such individual's
14 having exercised, enjoyed, assisted, or encouraged the ex-
15 ercise or enjoyment of, any right granted or protected by
16 this Act.

17 **SEC. 14. POSTING NOTICES.**

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

23 **SEC. 15. REGULATIONS.**

24 The Commission shall have authority to issue regula-
25 tions to carry out this Act.

1 **SEC. 16. RELATIONSHIP TO OTHER LAWS.**

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

6 **SEC. 17. SEVERABILITY.**

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

12 **SEC. 18. EFFECTIVE DATE.**

13 This Act shall take effect 60 days after the date of
14 enactment of this Act and shall not apply to conduct oc-
15 ccurring before such effective date.

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