

110TH CONGRESS  
1ST SESSION

# H. R. 3685

[Report No. 110-]

To prohibit employment discrimination on the basis of sexual orientation.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 27, 2007

Mr. FRANK of Massachusetts (for himself, Ms. PRYCE of Ohio, Mr. SHAYS, Mr. ANDREWS, and Mr. GEORGE MILLER of California) introduced the following bill; which was referred to the Committee on Education and Labor, and in addition to the Committees on House Administration, Oversight and Government Reform, and Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

OCTOBER --, 2007

Reported from the Committee on Education and Labor

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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-Dis-  
5 crimination Act of 2007”.

1 **SEC. 2. PURPOSES.**

2 The purposes of this Act are—

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

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

9 (3) to invoke congressional powers, including  
10 the powers to enforce the 14th amendment to the  
11 Constitution, and to regulate interstate commerce  
12 and provide for the general welfare pursuant to sec-  
13 tion 8 of article I of the Constitution, in order to  
14 prohibit employment discrimination on the basis of  
15 sexual orientation.

16 **SEC. 3. DEFINITIONS.**

17 (a) IN GENERAL.—In this Act:

18 (1) COMMISSION.—The term “Commission”  
19 means the Equal Employment Opportunity Commis-  
20 sion.

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

24 (3) EMPLOYEE.—

25 (A) IN GENERAL.—the term “employee”  
26 means—

1 (i) an employee as defined in section  
2 701(f) of the Civil Rights Act of 1964 (42  
3 U.S.C. 2000e(f);

4 (ii) a Presidential appointee or State  
5 employee to which section 302(a)(1) of the  
6 Government Employee Rights Act of 1991  
7 (42 U.S.C. 2000e–16(a)(1) applies;

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

13 (iv) an employee or applicant to which  
14 section 717(a) of the Civil Rights Act of  
15 1964 (42 U.S.C. 2000e–16(a)) applies.

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

20 (4) EMPLOYER.—The term “employer”  
21 means—

22 (A) a person engaged in an industry affect-  
23 ing commerce (as defined in section (701)(h) of  
24 the Civil Rights Act of 1964 (42 U.S.C.  
25 2000e(h)) who has 15 or more employees (as

1 defined in subparagraphs (A)(i) and (B) of  
2 paragraph (3)) for each working day in each of  
3 20 or more calendar weeks in the current or  
4 preceding calendar year, and any agent of such  
5 a person, but does not include a bona fide pri-  
6 vate membership club (other than a labor orga-  
7 nization) that is exempt from taxation under  
8 section 501(c) of the Internal Revenue Code of  
9 1986;

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

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

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

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

23 (6) LABOR ORGANIZATION.—The term “labor  
24 organization” has the meaning given the term in

1 section 701(d) of the Civil Rights Act of 1964 (42  
2 U.S.C. 2000e(d)).

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

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

8 (A) a religious corporation, association, or  
9 society; or

10 (B) a school, college, university, or other  
11 educational institution or institution of learn-  
12 ing, if—

13 (i) the institution is in whole or sub-  
14 stantial part controlled, managed, owned,  
15 or supported by a particular religion, reli-  
16 gious corporation, association, or society;  
17 or

18 (ii) the curriculum of the institution is  
19 directed toward the propagation of a par-  
20 ticular religion.

21 (9) SEXUAL ORIENTATION.—The term “sexual  
22 orientation” means homosexuality, heterosexuality,  
23 or bisexuality.

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

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

7           (1) to an employee or an employer shall be con-  
8           sidered to refer to an employee (as defined in para-  
9           graph (3)) or an employer (as defined in paragraph  
10          (4)), respectively, except as provided in paragraph  
11          (2) below; and

12          (2) to an employer in subsection (f) of that sec-  
13          tion shall be considered to refer to an employer (as  
14          defined in paragraph (4)(A)).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21           (g) DISPARATE IMPACT.—Only disparate treatment  
22 claims may be brought under this Act.

23 **SEC. 5. RETALIATION PROHIBITED.**

24           It shall be an unlawful employment practice for a cov-  
25 ered entity to discriminate against an individual because

1 such individual (1) opposed any practice made an unlawful  
2 employment practice by this Act; or (2) made a charge,  
3 testified, assisted, or participated in any manner in an in-  
4 vestigation, proceeding, or hearing under this Act.

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

6 This Act shall not apply to a religious organization.

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

9 (a) ARMED FORCES.—

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

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

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

21 **SEC. 8. CONSTRUCTION.**

22 (a) EMPLOYER RULES AND POLICIES.—

23 (1) IN GENERAL.—Nothing in this Act shall be  
24 construed to prohibit a covered entity from enforcing  
25 rules and policies that do not intentionally cir-

1        cumvent the purposes of this Act, if the rules or  
2        policies are designed for, and uniformly applied to,  
3        all individuals regardless of actual or perceived sex-  
4        ual orientation.

5            (2) SEXUAL HARASSMENT.—Nothing in this  
6        Act shall be construed to limit a covered entity from  
7        taking adverse action against an individual because  
8        of a charge of sexual harassment against that indi-  
9        vidual, provided that rules and policies on sexual  
10       harassment, including when adverse action is taken,  
11       are designed for, and uniformly applied to, all indi-  
12       viduals regardless of actual or perceived sexual ori-  
13       entation.

14           (3) ACTIONS CONDITIONED ON MARRIAGE.—An  
15       unlawful employment practice under section 4 shall  
16       include an action described in that section that is  
17       conditioned, in a State in which a person cannot  
18       marry a person of the same sex, either on being  
19       married or being eligible to marry.

20           (b) EMPLOYEE BENEFITS.—Nothing in this Act shall  
21       be construed to require a covered entity to treat a couple  
22       who are not married, including a same-sex couple who are  
23       not married, in the same manner as the covered entity  
24       treats a married couple for purposes of employee benefits.

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

2 The Commission shall not collect statistics on actual  
3 or perceived sexual orientation from covered entities, or  
4 compel the collection of such statistics by covered entities.

5 **SEC. 10. ENFORCEMENT.**

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

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

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

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

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

21 (2) the Librarian of Congress shall have the  
22 same powers as the Librarian of Congress has to ad-  
23 minister and enforce title VII of the Civil Rights Act  
24 of 1964 (42 U.S.C. 2000e et seq.) in the case of a  
25 claim alleged by such individual for a violation of  
26 such title;

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

9           (4) the Attorney General shall have the same  
10          powers as the Attorney General has to administer  
11          and enforce—

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

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

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

21          (5) the President, the Commission, and the  
22          Merit Systems Protection Board shall have the same  
23          powers as the President, the Commission, and the  
24          Board, respectively, have to administer and enforce  
25          chapter 5 of title 3, United States Code, in the case

1 of a claim alleged by such individual for a violation  
2 of section 411 of such title;

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

6 (A) title VII of the Civil Rights Act of  
7 1964 (42 U.S.C. 2000e et seq.) in the case of  
8 a claim alleged by such individual for a viola-  
9 tion of such title;

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

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

21 (D) chapter 5 of title 3, United States  
22 Code, in the case of a claim alleged by such in-  
23 dividual for a violation of section 411 of such  
24 title.

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

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

9 (2) the procedures and remedies applicable for  
10 a violation of section 302(a)(1) of the Government  
11 Employee Rights Act of 1991 (2 U.S.C. 1202(a)(1))  
12 in the case of a claim alleged by such individual for  
13 a violation of such section;

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

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

23 (c) OTHER APPLICABLE PROVISIONS.—With respect  
24 to a claim alleged by a covered employee (as defined in  
25 section 101 of the Congressional Accountability Act of

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

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

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

12 (b) REMEDIES FOR STATE EMPLOYEES.—

13 (1) IN GENERAL.—

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

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  
2           Rights Act of 1964 (42 U.S.C. 2000d–4a).

3           (2) OFFICIALS.—An official of a State may be  
4           sued in the official capacity of the official by any  
5           employee or applicant for employment who has com-  
6           plied with the applicable procedures of section 10,  
7           for equitable relief that is authorized under this Act.  
8           In such a suit the court may award to the prevailing  
9           party those costs authorized by section 722 of the  
10          Revised Statutes of the United States (42 U.S.C.  
11          1988).

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

18          (c) REMEDIES AGAINST THE UNITED STATES AND  
19          THE STATES.—Notwithstanding any other provision of  
20          this Act, in an action or administrative proceeding against  
21          the United States or a State for a violation of this Act,  
22          remedies (including remedies at law and in equity, and  
23          interest) are available for the violation to the same extent  
24          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(c) of title 3,  
18 United States Code.

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

20 This Act shall not invalidate or limit the rights, rem-  
21 edies, or procedures available to an individual claiming  
22 discrimination prohibited under any other Federal law or  
23 regulation or any law or regulation of a State or political  
24 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 6 months after the date  
9 of the enactment of this Act and shall not apply to conduct  
10 occurring before the effective date.