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

IN THE HOUSE OF REPRESENTATIVES

APRIL 24, 2007

Mr. FRANK OF MASSACHUSETTS (for himself, Ms. PRYCE OF OHIO, Ms. BALDWIN, Mr. SHAYS, Mr. CROWLEY, Ms. KILPATRICK, Mrs. CAPPS, Mr. WYNN, Mr. CLAY, Mrs. MALONEY of New York, Mr. ACKERMAN, Mr. HONDA, Mr. PALLONE, Mr. LANGEVIN, Mr. PASTOR, Mr. WAXMAN, Ms. LINDA T. SÁNCHEZ of California, Mr. GONZALEZ, Mr. MEEHAN, Mr. ALLEN, Mr. FARR, Ms. MCCOLLUM of Minnesota, Mr. MCDERMOTT, Mr. EMANUEL, Mr. HINOJOSA, Mr. MORAN of Virginia, Mr. MOORE of Kansas, Mr. ABERCROMBIE, Mr. LEVIN, Mr. JOHNSON of Georgia, Mr. DOYLE, Ms. ZOE Lofgren of California, Mr. CUMMINGS, Mr. LOEBSACK, Mr. DINGELL, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. BERMAN, Mr. WEXLER, Mr. RANGEL, Ms. JACKSON-LEE of Texas, Mr. SCHIFF, Mr. WU, Mr. VAN HOLLEN, Ms. ROS-LEHTINEN, Mr. CLEAVER, Mr. DOGGETT, Mr. HINCHEY, Ms. HIRONO, Mr. MATHESON, Mr. ANDREWS, Mr. PASCRELL, Mr. HOLT, Mr. HASTINGS of Florida, Mr. FILNER, Mr. MICHAUD, Mr. NADLER, Mr. MCGOVERN, Mr. CAPUANO, Mr. ENGEL, Mr. DELAHUNT, Mr. MARKEY, Mr. OLVER, Mr. NEAL of Massachusetts, Mr. DEFAZIO, Ms. NORTON, Mr. SIRES, Mr. ELLISON, and Mrs. DAVIS 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

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Employment Non-Discrimination Act of

2007”.

2. PURPOSES.

The purposes of this Act are—

(1)

to provide a comprehensive Federal prohibition of employment discrimination on the basis of sexual orientation or gender identity;

(2)

to provide meaningful and effective remedies for employment discrimination on the basis of sexual orientation or gender identity; and

(3)

to invoke congressional powers, including the powers to enforce the 14th amendment to the Constitution, and to regulate interstate commerce and provide for the general welfare pursuant to section 8 of article I of the Constitution, in order to prohibit employment discrimination on the basis of sexual orientation or gender identity.

3. DEFINITIONS.

(a) **IN GENERAL.**—

In this Act:

(1) **COMMISSION.**—

The term “Commission” means the Equal Employment Opportunity Commission.

(2) **COVERED ENTITY.**—

The term “covered entity” means an employer, employment agency, labor organization, or joint labor-management committee.

(3) **EMPLOYEE.**—

(A) **IN GENERAL.**—

the term “employee” means—

(i)

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

(ii)

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

(iii)

a covered employee, as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. 1301) or section 411(c) of title 3, United States Code; or

(iv)

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

(B) EXCEPTION.—

The provisions of this Act that apply to an employee or individual shall not apply to a volunteer who receives no compensation.

(4) EMPLOYER.—

The term “employer” means—

(A)

a person engaged in an industry affecting commerce (as defined in section (701)(h) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(h)) who has 15 or more employees (as defined in subparagraphs (A)(i) and (B) of paragraph (3)) for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but does not include a bona fide private membership club (other than a labor organization) that is exempt from

taxation under [section 501\(c\)](#) of the Internal Revenue Code of 1986;

(B)

an employing authority to which section 302(a)(1) of the Government Employee Rights Act of 1991 applies;

(C)

an employing office, as defined in section 101 of the Congressional Accountability Act of 1995 or [section 411\(c\)](#) of title 3, United States Code, or; and

(D)

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

(5) EMPLOYMENT AGENCY.—

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

(6) GENDER IDENTITY.—

The term “gender identity” means the gender-related identity, appearance, or mannerisms or other gender-related characteristics of an individual, with or without regard to the individual’s designated sex at birth.

(7) LABOR ORGANIZATION.—

The term “labor organization” has the meaning given the term in section 701(d) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(d)).

(8) PERSON.—

The term “person” has the meaning given the term in section 701(a) of the Civil Rights Act of 1964 ([42 U.S.C. 2000e\(a\)](#)).

(9) SEXUAL ORIENTATION.—

The term “sexual orientation” means homosexuality, heterosexuality,

or bisexuality.

(10) STATE.—

The term “State” has the meaning given the term in section 701(i) of the Civil Rights Act of 1964 ([42 U.S.C. 2000e\(i\)](#)).

(b) APPLICATION OF DEFINITIONS.—

For purposes of this section, a reference in section 701 of the Civil Rights Act of 1964—

(1)

to an employee or an employer shall be considered to refer to an employee (as defined in paragraph (3)) or an employer (as defined in paragraph (4)), respectively, except as provided in paragraph (2) below; and

(2)

to an employer in subsection (f) of that section shall be considered to refer to an employer (as defined in paragraph (4)(A)).

4. EMPLOYMENT DISCRIMINATION PROHIBITED.

(a) EMPLOYER PRACTICES.—

It shall be an unlawful employment practice for an employer—

(1)

to fail or refuse to hire or to discharge any individual, or otherwise discriminate against any individual with respect to the compensation, terms, conditions, or privileges of employment of the individual, because of such individual’s actual or perceived sexual orientation or gender identity; or

(2)

to limit, segregate, or classify the employees or applicants for employment of the employer in any way that would deprive or tend to deprive any individual of employment or otherwise adversely affect the status of the individual as an employee, because of such individual’s actual

or perceived sexual orientation or gender identity.

(b) EMPLOYMENT AGENCY PRACTICES.—

It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of the actual or perceived sexual orientation or gender identity of the individual or to classify or refer for employment any individual on the basis of the actual or perceived sexual orientation or gender identity of the individual.

(c) LABOR ORGANIZATION PRACTICES.—

It shall be an unlawful employment practice for a labor organization—

(1)

to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of the actual or perceived sexual orientation or gender identity of the individual;

(2)

to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way that would deprive or tend to deprive any individual of employment, or would limit such employment or otherwise adversely affect the status of the individual as an employee or as an applicant for employment because of such individual's actual or perceived sexual orientation or gender identity; or

(3)

to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) TRAINING PROGRAMS.—

It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual because of the actual or perceived sexual

orientation or gender identity of the individual in admission to, or employment in, any program established to provide apprenticeship or other training.

(e) **ASSOCIATION.**—

An unlawful employment practice described in any of subsections (a) through (d) shall be considered to include an action described in that subsection, taken against an individual based on the actual or perceived sexual orientation or gender identity of a person with whom the individual associates or has associated.

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

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

(1)

any covered entity to grant preferential treatment to any individual or to any group because of the actual or perceived sexual orientation or gender identity of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any actual or perceived sexual orientation or gender identity employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such actual or perceived sexual orientation or gender identity in any community, State, section, or other area, or in the available work force in any community, State, section, or other area; or

(2)

the adoption or implementation by a covered entity of a quota on the basis of actual or perceived sexual orientation or gender identity.

(g) **DISPARATE IMPACT.**—

Only disparate treatment claims may be brought under this Act.

5. RETALIATION PROHIBITED.

It shall be an unlawful employment practice for a covered entity to discriminate against an individual because such individual (1) opposed any

practice made an unlawful employment practice by this Act; (2) opposed any practice that the individual reasonably believed is an unlawful employment practice under this Act; or (3) made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

6. EXEMPTION FOR RELIGIOUS ORGANIZATIONS.

(a) IN GENERAL.—

This Act shall not apply to any of the employment practices of a religious corporation, association, educational institution, or society which has as its primary purpose religious ritual or worship or the teaching or spreading of religious doctrine or belief.

(b) CERTAIN EMPLOYEES.—

For any religious corporation, association, educational institution, or society that is not wholly exempt under subsection (a), this Act shall not apply with respect to the employment of individuals whose primary duties consist of teaching or spreading religious doctrine or belief, religious governance, supervision of a religious order, supervision of persons teaching or spreading religious doctrine or belief, or supervision or participation in religious ritual or worship.

(c) CONFORMITY TO RELIGIOUS TENETS.—

Under this Act, a religious corporation, association, educational institution, or society may require that applicants for, and employees in, similar positions conform to those religious tenets that such corporation, association, institution, or society declares significant. Under this Act, such a declaration by a religious corporation, association, educational institution or society stating which of its religious tenets are significant shall not be subject to judicial or administrative review. Any such declaration made for purposes of this Act shall be admissible only for proceedings under this Act.

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

(a) ARMED FORCES.—

(1) EMPLOYMENT.—

In this Act, the term “employment” does not apply to the relationship between the United States and members of the Armed Forces.

(2) ARMED FORCES.—

In paragraph (1) the term “Armed Forces” means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(b) VETERANS’ PREFERENCES.—

This title does not repeal or modify any Federal, State, territorial, or local law creating a special right or preference concerning employment for a veteran.

8. CONSTRUCTION.

(a) EMPLOYER RULES AND POLICIES.—

(1) IN GENERAL.—

Nothing in this Act shall be construed to prohibit a covered entity from enforcing rules and policies that do not circumvent the purposes of this Act, if the rules or policies are designed for, and uniformly applied to, all individuals regardless of actual or perceived sexual orientation or gender identity.

(2) SEXUAL HARASSMENT.—

Nothing in this Act shall be construed to limit a covered entity from taking adverse action against an individual because of a charge of sexual harassment against that individual, provided that rules and policies on sexual harassment, including when adverse action is taken, are designed for, and uniformly applied to, all individuals regardless of actual or perceived sexual orientation or gender identity.

(3) CERTAIN SHARED FACILITIES.—

Nothing in this Act shall be construed to establish an unlawful employment practice based on actual or perceived gender identity due to the denial of access to shared shower or dressing facilities in which being seen fully unclothed is unavoidable, provided that the employer provides reasonable access to adequate facilities that are not inconsistent with the employee’s gender identity as established with the employer at the time of

employment or upon notification to the employer that the employee has undergone or is undergoing gender transition, whichever is later.

(4) **DRESS AND GROOMING STANDARDS.**—Nothing in this Act shall prohibit an employer from requiring an employee, during the employee’s hours at work, to adhere to reasonable dress or grooming standards not prohibited by other provisions of Federal, State, or local law, provided that the employer permits any employee who has undergone gender transition prior to the time of employment, and any employee who has notified the employer that the employee has undergone or is undergoing gender transition after the time of employment, to adhere to the same dress or grooming standards for the gender to which the employee has transitioned or is transitioning.

(5) **ACTIONS CONDITIONED ON MARRIAGE.**—Notwithstanding section 4(g), an unlawful employment practice under section 4 shall include an action described in that section that is conditioned, in a State in which a person cannot marry a person of the same sex, either on being married or being eligible to marry.

(b) **EMPLOYEE BENEFITS.**—

Nothing in this Act shall be construed to require a covered entity to treat a couple who are not married, including a same-sex couple who are not married, in the same manner as the covered entity treats a married couple for purposes of employee benefits. Notwithstanding this Act or any other provision of law, a State or political subdivision of a State may establish rights, remedies, or procedures for the provision of employee benefits to an individual for the benefit of the domestic partner of such individual.

9. COLLECTION OF STATISTICS PROHIBITED.

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

10. ENFORCEMENT.

(a) **ENFORCEMENT POWERS.**—

With respect to the administration and enforcement of this Act in the case of

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

(1)

the Commission shall have the same powers as the Commission has to administer and enforce—

(A)

title VII of the Civil Rights Act of 1964 ([42 U.S.C. 2000e et seq.](#));
or

(B)

sections 302 and 304 of the Government Employee Rights Act of 1991 ([42 U.S.C. 2000e–16b](#) and [2000e–16c](#)),

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

(2)

the Librarian of Congress shall have the same powers as the Librarian of Congress has to administer and enforce title VII of the Civil Rights Act of 1964 ([42 U.S.C. 2000e et seq.](#)) in the case of a claim alleged by such individual for a violation of such title;

(3)

the Board (as defined in section 101 of the Congressional Accountability Act of 1995 ([2 U.S.C. 1301](#))) shall have the same powers as the Board has to administer and enforce the Congressional Accountability Act of 1995 ([2 U.S.C. 1301 et seq.](#)) in the case of a claim alleged by such individual for a violation of section 201(a)(1) of such Act ([2 U.S.C. 1311\(a\)\(1\)](#));

(4)

the Attorney General shall have the same powers as the Attorney

General has to administer and enforce—

(A)

title VII of the Civil Rights Act of 1964 ([42 U.S.C. 2000e et seq.](#));
or

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

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

(5)

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

(6)

a court of the United States shall have the same jurisdiction and powers as the court has to enforce—

(A)

title VII of the Civil Rights Act of 1964 ([42 U.S.C. 2000e et seq.](#))
in the case of a claim alleged by such individual for a violation of such title;

(B) sections 302 and 304 of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e–16b and 2000e–16c) in the case of a claim alleged by such individual for a violation of section 302(a)(1) of such Act (42 U.S.C. 2000e–16b(a)(1));

(C)

the Congressional Accountability Act of 1995 ([2 U.S.C. 1301 et seq.](#)) in the case of a claim alleged by such individual for a violation of section 201(a)(1) of such Act ([2 U.S.C. 1311\(a\)\(1\)](#)); and

(D)

chapter 5 of title 3, United States Code, in the case of a claim alleged by such individual for a violation of section 411 of such title.

(b) PROCEDURES AND REMEDIES.—

The procedures and remedies applicable to a claim alleged by an individual for a violation of this Act are—

(1)

the procedures and remedies applicable for a violation of title VII of the Civil Rights Act of 1964 ([42 U.S.C. 2000e et seq.](#)) in the case of a claim alleged by such individual for a violation of such title;

(2)

the procedures and remedies applicable for a violation of section 302(a)(1) of the Government Employee Rights Act of 1991 ([2 U.S.C. 1202\(a\)\(1\)](#)) in the case of a claim alleged by such individual for a violation of such section;

(3)

the procedures and remedies applicable for a violation of section 201(a)(1) of the Congressional Accountability Act of 1995 ([2 U.S.C. 1311\(a\)\(1\)](#)) in the case of a claim alleged by such individual for a violation of such section; and

(4)

the procedures and remedies applicable for a violation of [section 411](#) of title 3, United States Code, in the case of a claim alleged by such individual for a violation of such section.

(c) OTHER APPLICABLE PROVISIONS.—

With respect to a claim alleged by a covered employee (as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. 1301)) for a violation of this Act, title III of the Congressional Accountability Act of 1995 (2 U.S.C. 1381 et seq.) shall apply in the same manner as such title applies with respect to a claim alleged by such a covered employee for a violation of section 201(a)(1) of such Act (2 U.S.C. 1311(a)(1)).

11. STATE AND FEDERAL IMMUNITY.

(a) STATE IMMUNITY.—

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

(b) REMEDIES FOR STATE EMPLOYEES.—

(1) IN GENERAL.—

(A) WAIVER.—

A State's receipt or use of Federal financial assistance for any program or activity of a State shall constitute a waiver of sovereign immunity, under the 11th amendment to the Constitution or otherwise, to a suit brought by an employee or applicant for employment of that program or activity under this Act for a remedy authorized under subsection (c).

(B) DEFINITION.—

In this paragraph, the term "program or activity" has the meaning given the term in section 606 of the Civil Rights Act of 1964 (42 U.S.C. 2000d-4a).

(2) OFFICIALS.—

An official of a State may be sued in the official capacity of the official by any employee or applicant for employment who has complied with the applicable procedures of section 10, for equitable relief that is authorized under this Act. In such a suit the court may award to the prevailing party those costs authorized by section 722 of the Revised Statutes of the United States (42 U.S.C. 1988).

(3) EFFECTIVE DATE.—

With respect to a particular program or activity, paragraphs (1) and (2) apply to conduct occurring on or after the day, after the date of enactment of this Act, on which a State first receives or uses Federal financial assistance for that program or activity.

(c) REMEDIES AGAINST THE UNITED STATES AND THE STATES.—

Notwithstanding any other provision of this Act, in an action or administrative proceeding against the United States or a State for a violation of this Act, remedies (including remedies at law and in equity, and interest) are available for the violation to the same extent as the remedies are available for a violation of title VII of the Civil Rights Act of 1964 ([42 U.S.C. 2000e et seq.](#)) by a private entity, except that—

(1)

punitive damages are not available; and

(2)

compensatory damages are available to the extent specified in section 1977A(b) of the Revised Statutes ([42 U.S.C. 1981a\(b\)](#)).

12. ATTORNEYS' FEES.

Notwithstanding any other provision of this Act, in an action or administrative proceeding for a violation of this Act, an entity described in section 10(a) (other than paragraph (4) of such section), in the discretion of the entity, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee (including expert fees) as part of the costs. The Commission and the United States shall be liable for the costs to the same extent as a private person.

13. POSTING NOTICES.

A covered entity who is required to post notices described in section 711 of the Civil Rights Act of 1964 ([42 U.S.C. 2000e–10](#)) shall post notices for employees, applicants for employment, and members, to whom the provisions specified in section 10(b) apply, that describe the applicable provisions of this Act in the manner prescribed by, and subject to the penalty provided under,

section 711 of the Civil Rights Act of 1964.

14. REGULATIONS.

(a) IN GENERAL.—

Except as provided in subsections (b), (c), and (d), the Commission shall have authority to issue regulations to carry out this Act.

(b) LIBRARIAN OF CONGRESS.—

The Librarian of Congress shall have authority to issue regulations to carry out this Act with respect to employees and applicants for employment of the Library of Congress.

(c) BOARD.—

The Board referred to in section 10(a)(3) shall have authority to issue regulations to carry out this Act, in accordance with section 304 of the Congressional Accountability Act of 1995 ([2 U.S.C. 1384](#)), with respect to covered employees, as defined in section 101 of such Act ([2 U.S.C. 1301](#)).

(d) PRESIDENT.—

The President shall have authority to issue regulations to carry out this Act with respect to covered employees, as defined in [section 411\(c\)](#) of title 3, United States Code.

15. RELATIONSHIP TO OTHER LAWS.

This Act shall not invalidate or limit the rights, remedies, or procedures available to an individual claiming discrimination prohibited under any other Federal law or regulation or any law or regulation of a State or political subdivision of a State.

16. SEVERABILITY.

If any provision of this Act, or the application of the provision to any person or circumstance, is held to be invalid, the remainder of this Act and the application of the provision to any other person or circumstances shall not be affected by the invalidity.

17. EFFECTIVE DATE.

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