To prohibit employment discrimination on the basis of sexual orientation.

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

A BILL

To prohibit employment discrimination on the basis of sexual orientation.

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”.

SEC. 2. PURPOSES.

The purposes of this Act are—
(1) to provide a comprehensive Federal prohibition of employment discrimination on the basis of sexual orientation;

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

SEC. 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(e) 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) 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)).

(7) 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)).

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

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

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

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

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

(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)).

**SEC. 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

(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 indi-
vidual of employment or otherwise adversely affect
the status of the individual as an employee, because
of such individual’s actual or perceived sexual ori-
entation.

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

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

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

(2) to limit, segregate, or classify its member-
ship 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 em-
ployment 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

(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 appren-
ticeship or other training or retraining, including on-the-
job training programs, to discriminate against any indi-
vidual because of the actual or perceived sexual orientation
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 sub-
section, taken against an individual based on the actual
or perceived sexual orientation 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 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 sex-
ual orientation employed by any employer, referred
or classified for employment by any employment
agency or labor organization, admitted to member-
ship or classified by any labor organization, or ad-
mitted 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 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 cov-
ered entity of a quota on the basis of actual or per-
ceived sexual orientation.

(g) Disparate Impact.—Only disparate treatment
claims may be brought under this Act.

SEC. 5. RETALIATION PROHIBITED.

It shall be an unlawful employment practice for a cov-
ered entity to discriminate against an individual because
such individual (1) opposed any practice made an unlawful employment practice by this Act; or (2) made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

SEC. 6. EXEMPTION FOR RELIGIOUS ORGANIZATIONS.

This Act shall not apply to a religious organization.

SEC. 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.

SEC. 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 intentionally cir-
cumvent 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.

(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.

(3) ACTIONS CONDITIONED ON MARRIAGE.—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.
SEC. 9. COLLECTION OF STATISTICS PROHIBITED.

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

SEC. 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


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 en-
force—

(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 viola-
tion of such title;

(B) sections 302 and 304 of the Govern-
ment 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 viola-
tion 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 in-
dividual 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.

(e) 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)).

SEC. 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

(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 com-
plied 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 par-
ticular 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.

(e) 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)).

SEC. 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 Com-
mission and the United States shall be liable for the costs
to the same extent as a private person.

SEC. 13. POSTING NOTICES.
A covered entity who is required to post notices de-
scribed in section 711 of the Civil Rights Act of 1964 (42
U.S.C. 2000e–10) shall post notices for employees, appli-
cants for employment, and members, to whom the provi-
sions 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.
SEC. 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.

SEC. 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.
SEC. 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.

SEC. 17. EFFECTIVE DATE.

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