

Instructions for completing Fair Employment Mark licensing agreement:

- 1) Read entire agreement;
- 2) On p. 2, insert name of the Licensee;
- 3) On p. 8, insert (a) name and mailing address of Licensee; (b) signature, printed name, title of authorized agent of Licensee and date; and (c) approximate number of employees currently employed by Licensee.
- 4) Fax to Ian Ayres (203-432-4769 or 203-432-8260).

Licensing Agreement for the Fair Employment Mark

This AGREEMENT is made by and between:

Ian Ayres & Jennifer Gerarda Brown, individuals residing in New Haven, CT (hereinafter "Licensor") and

_____ (hereinafter "Licensee").
[please insert name of employer/firm],

WHEREAS, Licensor has devised a Fair Employment mark (hereinafter "the Mark"), a copy of which is attached as Attachment A to this agreement, and has developed goodwill associated with the Mark and names "Fair Employment Mark," and "fairemploymentmark.org."

WHEREAS, Licensee and Licensor desire to enter into an agreement pertaining to the Mark whereby Licensee shall have the right to use the Mark;

WHEREAS Licensee desires to privately commit to non-discrimination as defined in the Employment Non-Discrimination Act (ENDA) as proposed in H.R. 2026, 110th Cong., 1st Sess. (2007), which is attached as Attachment B to this agreement.

NOW, THEREFORE, in consideration of the mutual agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Licensor and Licensee agree as follows:

1. **GRANT OF LICENSE.** Licensor hereby grants to Licensee a license to use the Mark and all goodwill associated therewith as embodied by the term "the Mark", including, but not limited to, using the Mark in Licensee's products, services, and advertising materials.
2. **TERM.** The term of the license herein granted shall be five years ("the Term"), and renewed automatically upon for another five years at the end of every previous Term unless otherwise terminated by either party as set forth in Paragraph 13.
3. **CONSIDERATION.** In exchange for Licensor licensing the Mark to Licensee, Licensee promises to abide by the standards of fair employment defined in the next paragraph.
4. **STANDARDS OF FAIR EMPLOYMENT.** Licensee promises not to engage in the following employment practices:

(1) "to fail or refuse to hire or to discharge any individual, or otherwise to 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; ENDA, H.R. 2026, §4 (a)(1) (attached hereto) 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;" ENDA, H.R. 2026, §4 (a)(2) (attached hereto)

(3) 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;" ENDA, H.R. 2026, §4(d) (attached hereto)

(4) to discriminate against an individual because such individual opposed any of the employment practices described in subsections (1) through (3), "or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing" concerned with this License. ENDA, H.R. 2026, §5 (attached hereto)

The employment practices described in any of subsections (1) through (3) "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." ENDA, H.R. 2026, §4 (e) (attached hereto)

5. **THIRD-PARTY BENEFICIARIES.** Licensee and Licensor agree to designate as express third-party beneficiaries of this agreement all persons and entities that would be entitled to sue if ENDA were in effect (including governmental civil rights enforcement agencies). In particular, Licensee and Licensor designate as express third-party beneficiaries all persons who are or have been employed by the Licensee or applied for employment with the Licensee during the term of the license. The Licensee and Licensor intend that these third-party beneficiaries will have the right to sue the Licensee for any breach of this agreement and have a legal right to the same remedies (including damages and injunctive relief) to which they would be entitled if ENDA were in effect.
6. **DISPARATE IMPACT AND AFFIRMATIVE ACTION.** Disparate impact claims may not be brought under this License agreement. The Licensee by signing this agreement does not promise to engage in affirmative action on the basis of actual or perceived sexual orientation or gender identity, and affirmative action for a breach of this agreement may not be imposed. See ENDA, H.R. 2026, §§ 4(f), 12(d) (attached hereto)

7. **BENEFITS.** This License shall not be construed to require the provision of employee benefits to an individual for the benefit of the domestic partner of such individual.
8. **COOPERATION.** In exchange for the license granted herein, Licensee agrees to cooperate reasonably with Licensor's requests for materials useful to Licensor in maintenance and renewal of the Mark, including but not limited to, specimens of use of the Mark in connection with Licensee's offering of goods and services, and lists of goods and services offered by the Licensee in connection with the Mark.
9. **OWNERSHIP OF THE MARK.** Licensee acknowledges that Licensor is the owner of the Mark and that all of Licensee's use of the Mark and any goodwill established in association with Licensee's use of the Mark shall inure to the benefit of Licensor. Apart from actions of fraud, misrepresentation and the like, Licensee shall not contest or deny the ownership or validity of the Mark or the title of the Licensor thereto.
10. **LIMITED WARRANTY.** Licensor hereby warrants that it has no actual knowledge of any trademark, service mark, collective mark or certification mark rights of any third party which would impair Licensee's use of the Mark. Licensor further warrants that it has no actual knowledge of any adversarial proceeding or other license concerning the Mark. Licensor does not warrant that the Mark is a valid certification mark recognized by the U.S. Patent and Trademark Office.
11. **CERTIFICATION.** Licensor does not certify that Licensee in fact abides by the Standards of Fair Employment. But Licensor certifies that Licensee by signing this agreement (1) has promised to abide by the Standards of Fair Employment and (2) has granted third-party beneficiary rights to the individuals and entities enumerated above to enforce breaches of the Licensee's promise to abide by the Standards of Fair Employment.

12. INFRINGEMENT BY THIRD PARTIES. The parties acknowledge their joint interest and obligation in policing the Mark and of notifying the other in the event that any potential infringement is found. Specifically, Licensee and Licensor agree promptly to give notice to the other of any infringement of the Mark or any threatened litigation or proceeding involving the Mark. Licensor shall not be obliged to take any action whatsoever against third parties who are infringing or believed to be infringing the Mark except as Licensor, in its sole discretion, shall deem advisable. Any action taken by Licensor on its own initiative shall be solely within its discretion, control and expense. If Licensee makes a written request to Licensor to take action against an alleged third party infringer, Licensor may, in its discretion, elect not to take any action against such third party infringer. In this event, or if Licensor does not respond to the aforementioned written request in seven (7) days, Licensee, at its sole cost, control, discretion and expense, shall be free to undertake any action against such a third party infringer. In such an event, Licensee shall have the right to select its own counsel and Licensee shall keep Licensor completely informed of all developments. Except as set forth above, Licensee shall not institute any legal or administrative proceeding against any third party with respect to the Mark without the prior written consent of Licensor. Licensor and Licensee may agree to permit themselves to be named in any adversarial action reasonably required to police and protect the Mark. In the event that Licensor does agree to participate in an adversarial proceeding instituted by the Licensee, the Licensee shall indemnify the Licensor. Licensor and Licensee agree to cooperate fully with the other in any defense or assertion of rights associated with the Mark.

13. TERMINATION. The Licensee for any reason can immediately terminate this agreement prior to the normal expiration of the Term by sending a written notice of termination by mail to the Licensor. The Licensor can terminate this agreement prior to the normal expiration of the Term if the Licensee shall be in breach of any material obligation set forth herein. Termination by the Licensor shall be effected by delivery of notice to the Licensee which notice expressly and in detail sets forth the basis for termination. This Agreement will terminate sixty (60) days after the Licensor shall send by mail notice of termination.

14. ENFORCEMENT. The Licensor waives any and all rights to sue Licensee for violation of the Standards of Fair Employment, but retains the right to sue the Licensee for unauthorized use of the Mark (including use of the Mark after termination of the license). Third-party beneficiaries have the exclusive rights to sue the Licensee for violation of the Standards of Fair Employment. Any lawsuit by a third-party beneficiary for violation of the Standards of Fair Employment shall be filed within one hundred and eighty days after the alleged violating employment practice occurred. Licensee agrees that if a claim under the mark is subject to arbitration, the arbitrator will produce a written opinion that will be available to the public. Licensee promises to waive otherwise enforceable confidentiality agreements in arbitration clauses with respect to claims under the mark.

15. **REMEDIES.** The remedies applicable to a claim alleged by a third party beneficiary for a violation of the Standards of Fair Employment shall include all “remedies applicable for a violation of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.)” ENDA, H.R. 2026, §12 (b) (1) (attached hereto). All specific remedies provided for in this Agreement shall be cumulative and shall not be exclusive of one another or of any other remedies available in law or in equity. The failure to insist upon strict performance of any of the covenants or terms hereof to be performed shall not be construed as a waiver of such covenants or terms. Should either the Licensee or the Licensor file litigation against the other party to enforce the terms of this Agreement, then the nonbreaching party in such litigation as determined by a final, non-appealable order of a court of competent jurisdiction shall be entitled to receive from the breaching party all of its costs and expenses in such litigation including reasonable attorneys' fees.
16. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties solely with respect to the licensing of the Mark. Each party acknowledges that, in agreeing to enter into this Agreement, it has not relied on any representation, warranty, collateral contract or other assurance (except those set out in this Agreement and any documents referred to in it) made by or on behalf of any other Party or any other person whatsoever before the execution of this Agreement. The Agreement supersedes any prior agreements or understandings, whether written or oral, between or among the parties regarding the licensing of the Mark. The parties agree that this Agreement may not be amended or changed in any way except by written instruments signed by each of the parties hereto.
17. **CHOICE OF LAW AND FORUM.** Except to the extent governed by the Lanham Act (15 U.S.C. §§ 1051 et seq.), this Agreement shall be interpreted and construed pursuant to the law of the State of Connecticut without regard to its conflict of laws. The Standards of Fair Employment of this license shall be interpreted in cases of ambiguity to impose the same duties on the Licensor as would apply if the version of ENDA attached as attach B had been enacted by Congress and was in force. Any lawsuit filed in connection with this Agreement by either licensor or licensee against the other shall be in a court located in the State of Connecticut. Any lawsuit filed in connect with this Agreement by a third-party beneficiary shall be in a court located in the state where the alleged violation of the Standards of Fair Employment occurred.
18. **ASSIGNMENTS AND BINDING EFFECT.** Licensee shall not directly or indirectly assign, sub-license, pledge, encumber, grant or otherwise transfer any of its rights conferred by this Agreement. This Agreement shall be binding upon and inure to the benefit of each of the parties hereto and each of their respective authorized purchasers, successors and assigns.
19. **WAIVER.** The waiver by any party of a breach or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by such other party.

20. **SEVERABILITY.** If any provision of this Agreement is held to be illegal, invalid, or unenforceable under any law, rule, or regulation, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision never comprised a part hereof. The remaining provisions of this Agreement shall remain in full force and effect, and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance herefrom.
21. **RECITALS AND HEADINGS.** The recitals contained in this Agreement are an integral part hereof and this Agreement shall be construed in light of such recitals. The captions and headings contained herein are for convenient reference only and shall not be construed as a part hereof.
22. **COUNTERPART AGREEMENTS.** This Agreement may be executed by each of the parties in separate counterpart and have the same force and effect as if it had been executed as a single document.

23. **NOTICE.** Any notice or other communication required, contemplated or permitted under the terms of this Agreement must be given in writing by U.S. post or by overnight courier such as DHL, Federal Express, or Express Mail. Notice shall be deemed effective on the date sent. All notices or formal communications pursuant to this Agreement shall be sent to the parties as follows:

To Licensor: Ian Ayres & Jennifer Gerarda Brown
127 Wall Street
New Haven, CT 06511

To Licensee: _____

[insert name and mailing address]

IN WITNESS WHEREOF, the parties have executed this Agreement by and through their properly authorized signatories effective as of the date indicated above.

Licensor Signatures:

Ian Ayres
Dated: _____

Jennifer Gerarda Brown
Dated: _____

Licensee Signature:

[authorized signature]

[print name]

[print title]
Dated: _____

Approximate number of employees currently employed by Licensee: _____

Attachment A



110th CONGRESS
1st Session
H. R. 2015

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. SANCHEZ 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. PASCARELL, 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'.

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 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.

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(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)).

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 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.

SEC. 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.

SEC. 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.

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 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.

SEC. 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.

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

(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)).

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 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\(b\)](#)).

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 Commission 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 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.

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