

112TH CONGRESS
1ST SESSION

S. 1770

To prohibit discrimination in adoption or foster care placements based on the sexual orientation, gender identity, or marital status of any prospective adoptive or foster parent, or the sexual orientation or gender identity of the child involved.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 1, 2011

Mrs. GILLIBRAND (for herself, Mr. KERRY, Mr. SANDERS, Mrs. MURRAY, Mr. FRANKEN, and Mr. LAUTENBERG) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To prohibit discrimination in adoption or foster care placements based on the sexual orientation, gender identity, or marital status of any prospective adoptive or foster parent, or the sexual orientation or gender identity of the child involved.

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 “Every Child Deserves
5 a Family Act”.

6 **SEC. 2. CONGRESSIONAL FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—Congress finds the following:

1 (1) There is a shortage of qualified individuals
2 willing to adopt or foster a child in the child welfare
3 system. As a result, thousands of foster children
4 lack a permanent and safe home.

5 (2) In order to open more homes to foster chil-
6 dren, child welfare agencies should work to eliminate
7 sexual orientation, gender identity, and marital sta-
8 tus discrimination and bias in adoption and foster
9 care recruitment, selection, and placement proce-
10 dures.

11 (3) Of the estimated 400,000 children in the
12 United States foster care system, more than
13 107,000 cannot return to their original families and
14 are legally free for adoption.

15 (A) 52,891 children were adopted in 2010,
16 while 27,854 youth “aged out” of the foster
17 care system.

18 (B) Research shows that youth who “age
19 out” of the foster care system are at a high risk
20 for poverty, homelessness, incarceration, and
21 early parenthood.

22 (C) Increasing adoption rates, in addition
23 to establishing permanency and decreasing risk
24 factors for foster youth, can yield annual na-

1 tional cost savings between \$3,300,000,000 and
2 \$6,300,000,000.

3 (4) Experts agree that in many States, lesbian,
4 gay, bisexual, and transgender youth experience dis-
5 crimination, harassment, and violence in the foster
6 care system because of their sexual orientation or
7 gender identity.

8 (5) Approximately 60 percent of homeless les-
9 bian, gay, bisexual, and transgender youth were pre-
10 viously in foster care. According to the Urban Jus-
11 tice Center, many of these young people reported
12 that living on the streets felt “safer” than living in
13 their group or foster home.

14 (6) According to data taken from the 2010
15 Census and reviewed by the Williams Institute, an
16 estimated 17 percent of same-sex couples have at
17 least 1 child under 18 years of age living in the
18 home.

19 (7) According to Gary Gates of the Williams In-
20 stitute, there are approximately 1,000,000 lesbian,
21 gay, bisexual, and transgender couples throughout
22 the United States who are raising approximately
23 2,000,000 children.

24 (8) As of 2007, gay, lesbian, and bisexual par-
25 ents were raising 4 percent of all adopted children

1 and fostering for 3 percent of all foster children. A
2 report from the Williams Institute found that an ad-
3 ditional 2,000,000 gay, lesbian, and bisexual individ-
4 uals are interested in adoption.

5 (9) According to the Williams Institute/Urban
6 Institute, same-sex couples raising adopted children
7 tend to be older than, just as educated as, and have
8 access to the same economic resources as other
9 adoptive parents. Studies confirm that children with
10 same-sex parents have the same advantages and
11 same expectations for health, social, and psycho-
12 logical adjustment, and development as children
13 whose parents are heterosexual.

14 (10) An Evan B. Donaldson Adoption Institute
15 study found that one-third of child welfare agencies
16 in the United States currently reject gay, lesbian,
17 and bisexual applicants.

18 (A) The practice of prohibiting applicants
19 from becoming foster parents or adopting chil-
20 dren solely on the basis of sexual orientation or
21 marital status has resulted in reducing the
22 number of qualified adoptive and foster parents
23 overall and denying gay, lesbian, bisexual, and
24 unmarried relatives the opportunity to become
25 foster parents for their own kin, including

1 grandchildren, or to adopt their own kin, in-
2 cluding grandchildren, from foster care.

3 (B) According to the Williams Institute,
4 more than 14,000 children are currently in fos-
5 ter placements with gay, lesbian, and bisexual
6 parents. Another 65,000 children are being
7 raised by their adoptive parents. If other States
8 followed the minority of States and discrimi-
9 nated against qualified individuals because of
10 their sexual orientation or marital status, foster
11 care expenditures would increase between
12 \$87,000,000 and \$130,000,000 per year in
13 order to pay for additional institutional and
14 group care, as well as to recruit and train new
15 foster and adoptive parents.

16 (11) Some States allow 1 member of a same-
17 sex couple to adopt, but do not recognize both mem-
18 bers of the couple as the child's legal parents. Rec-
19 ognition of joint adoption provides children with the
20 same rights and security that children of hetero-
21 sexual parents enjoy. These protections include ac-
22 cess to both parents' health benefits, survivor's, So-
23 cial Security, and child support entitlements, legal
24 grounds for either parent to provide consent for
25 medical care, education, and other important deci-

1 sions, as well as the establishment of permanency
2 for both parents and child.

3 (12) Professional organizations in the fields of
4 medicine, psychology, law, and child welfare have
5 taken official positions in support of the ability of
6 qualified gay, lesbian, bisexual, and unmarried cou-
7 ples to foster and adopt, as supported by scientific
8 research showing sexual orientation as a nondeter-
9 minative factor in parental success.

10 (13) Discrimination against potential foster or
11 adoptive parents based on sexual orientation, gender
12 identity, or marital status is not in the best interests
13 of children in the foster care system.

14 (b) PURPOSES.—The purposes of this Act are to de-
15 crease the length of time that children wait for perma-
16 nency with a loving family and to promote the best inter-
17 ests of children in the child welfare system by preventing
18 discrimination in adoption and foster care placements
19 based on sexual orientation, gender identity, or marital
20 status.

21 **SEC. 3. EVERY CHILD DESERVES A FAMILY.**

22 (a) ACTIVITIES.—

23 (1) PROHIBITION.—An entity that receives Fed-
24 eral assistance or contracts with an entity that re-

1 ceives Federal assistance, and is involved in adoption
2 or foster care placements may not—

3 (A) deny to any person the opportunity to
4 become an adoptive or a foster parent on the
5 basis of the sexual orientation, gender identity,
6 or marital status of the person, or the sexual
7 orientation or gender identity of the child in-
8 volved;

9 (B) delay or deny the placement of a child
10 for adoption or into foster care on the basis of
11 the sexual orientation, gender identity, or mar-
12 ital status of any prospective adoptive or foster
13 parent, or the sexual orientation or gender iden-
14 tity of the child; or

15 (C) require different or additional
16 screenings, processes, or procedures for adop-
17 tive or foster placement decisions on the basis
18 of the sexual orientation, gender identity, or
19 marital status of the prospective adoptive or
20 foster parent, or the sexual orientation or gen-
21 der identity of the child involved.

22 (2) DEFINITION OF PLACEMENT DECISION.—In
23 this section, the term “placement decision” means
24 the decision to place, or to delay or deny the place-
25 ment of, a child in a foster care or an adoptive

1 home, and includes the decision of the agency or en-
2 tity involved to seek the termination of birth parent
3 rights or otherwise make a child legally available for
4 adoptive placement.

5 (b) **EQUITABLE RELIEF.**—Any individual who is ag-
6 grieved by an action in violation of subsection (a) may
7 bring an action seeking relief in a United States district
8 court of appropriate jurisdiction.

9 (c) **FEDERAL GUIDANCE.**—Not later than 6 months
10 after the date of enactment of this Act, the Secretary of
11 Health and Human Services shall publish guidance to con-
12 cerned entities with respect to compliance with this sec-
13 tion.

14 (d) **TECHNICAL ASSISTANCE.**—In order to ensure
15 compliance with, and ensure understanding of the legal,
16 practice, and culture changes required by, this Act in mak-
17 ing foster care and adoption placement decisions, the Sec-
18 retary shall provide technical assistance to all entities cov-
19 ered by this Act, including—

20 (1) identifying laws and regulations inconsistent
21 with this Act and providing guidance and training to
22 ensure the laws and regulations are brought into
23 compliance within the prescribed period of time;

24 (2) identifying casework practices and proce-
25 dures inconsistent with this Act and providing guid-

1 ance and training to ensure the practices and proce-
2 dures are brought into compliance within the pre-
3 scribed period of time;

4 (3) providing guidance in expansion of recruit-
5 ment efforts to ensure consideration of all interested
6 and qualified prospective adoptive and foster parents
7 regardless of the sexual orientation, gender identity,
8 or marital status of the prospective parent;

9 (4) comprehensive cultural competency training
10 for covered entities and prospective adoptive and fos-
11 ter parents; and

12 (5) training judges and attorneys involved in
13 foster care and adoption cases on the findings and
14 purposes of this Act.

15 (e) DEADLINE FOR COMPLIANCE.—

16 (1) IN GENERAL.—Except as provided in para-
17 graph (2), an entity that receives Federal assistance
18 and is involved with adoption or foster care place-
19 ments shall comply with this section not later than
20 6 months after publication of the guidance referred
21 to in subsection (c), or 1 year after the date of en-
22 actment of this Act, whichever occurs first.

23 (2) AUTHORITY TO EXTEND DEADLINE.—If a
24 State demonstrates to the satisfaction of the Sec-
25 retary of Health and Human Services that it is nec-

1 essary to amend State statutory law in order to
2 change a particular practice that is inconsistent with
3 this section, the Secretary may extend the compli-
4 ance date for the State and any entities in the State
5 that are involved with adoption or foster care place-
6 ments a reasonable number of days after the close
7 of the 1st State legislative session beginning after
8 the date the guidance referred to in subsection (c)
9 is published.

10 (3) AUTHORITY TO WITHHOLD FUNDS.—If a
11 State fails to comply with this section, the Secretary
12 may withhold payment to the State of amounts oth-
13 erwise payable to the State under part B or E of
14 title IV of the Social Security Act (42 U.S.C. 621
15 et seq., 670 et seq.), to the extent the Secretary
16 deems the withholding necessary to induce the State
17 into compliance with this section.

18 (f) GAO STUDY.—

19 (1) IN GENERAL.—Not later than 5 years after
20 the date of enactment of this Act, the Comptroller
21 General of the United States shall conduct a study
22 to determine whether the States have substantially
23 complied with this Act, including specifically whether
24 the States have—

1 (A) eliminated policies, practices, or stat-
2 utes that deny to any otherwise qualified person
3 the opportunity to become an adoptive or foster
4 parent on the basis of the sexual orientation,
5 gender identity, or marital status of the person,
6 or the sexual orientation or gender identity of
7 the child involved;

8 (B) removed all program, policy, or statu-
9 tory barriers that delay or deny the placement
10 of a child for adoption or into foster care on the
11 basis of the sexual orientation, gender identity,
12 or marital status of any qualified, prospective
13 adoptive or foster parent, or the sexual orienta-
14 tion or gender identity of the child; and

15 (C) eliminated all different or additional
16 screenings, processes, or procedures for adop-
17 tive or foster placement decisions based on the
18 sexual orientation, gender identity, or marital
19 status of the prospective adoptive or foster par-
20 ent, or the sexual orientation or gender identity
21 of the child involved.

22 (2) REPORT TO THE CONGRESS.—Not later
23 than 1 year after completing the study required by
24 paragraph (1), the Comptroller General shall submit

- 1 to Congress a written report that contains the re-
- 2 sults of the study.

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