

112TH CONGRESS
1ST SESSION

H. R. 1681

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 HOUSE OF REPRESENTATIVES

MAY 3, 2011

Mr. STARK (for himself, Mr. FILNER, Ms. MOORE, Mr. JACKSON of Illinois, Ms. CHU, Ms. BERKLEY, Mr. QUIGLEY, Ms. TSONGAS, Mr. WAXMAN, Mr. SERRANO, Mr. SABLAN, Mr. HASTINGS of Florida, Mr. ELLISON, Mrs. DAVIS of California, Mr. OLVER, Ms. LEE of California, Mr. WU, Mr. POLIS, Mr. GRIJALVA, Mr. LEWIS of Georgia, Mr. HINCHEY, Mr. GUTIERREZ, Mr. ROTHMAN of New Jersey, Ms. RICHARDSON, Ms. NORTON, Ms. MATSUI, Mr. MORAN, Ms. BALDWIN, Ms. ESHOO, Mr. NADLER, Ms. DELAURO, Mr. MCDERMOTT, Mr. MCGOVERN, Ms. PINGREE of Maine, and Mr. WEINER) introduced the following bill; which was referred to the Committee on Ways and Means

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Every Child Deserves
3 a Family Act”.

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

5 (a) FINDINGS.—The Congress finds the following:

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

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

16 (3) Of the estimated 500,000 children in the
17 United States foster care system, over 129,000 can-
18 not return to their original families and are legally
19 free for adoption.

20 (A) Fifty-one thousand children were
21 adopted in 2007, while 25,000 youth “aged
22 out” of the foster care system.

23 (B) Research shows that youth who “age
24 out” of the foster care system are at a high risk
25 for poverty, homelessness, incarceration, and
26 early parenthood.

1 (C) Increasing adoption rates, in addition
2 to establishing permanency and decreasing risk
3 factors for foster youth, can yield annual na-
4 tional cost savings between \$3,300,000,000 and
5 \$6,300,000,000.

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

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

17 (6) According to data taken from the 2000
18 Census, an estimated 27 percent of same-sex couples
19 have at least 1 child under 18 years of age living in
20 the home.

21 (7) According to research by Gary Gates of the
22 Williams Institute, there are approximately
23 1,000,000 lesbian, gay, bisexual, and transgender
24 couples throughout the United States who are rais-
25 ing approximately 2,000,000 children.

1 (8) As of 2007, gay, lesbian, and bisexual par-
2 ents were raising 4 percent of all adopted children
3 and fostering for 3 percent of all foster children. A
4 report from the Williams Institute found that an ad-
5 ditional 2,000,000 gay, lesbian, and bisexual individ-
6 uals are interested in adoption.

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

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

20 (A) The practice of prohibiting applicants
21 from becoming foster parents or adopting chil-
22 dren solely on the basis of sexual orientation or
23 marital status has resulted in reducing the
24 number of qualified adoptive and foster parents
25 overall and denying gay, lesbian, bisexual, and

1 unmarried relatives the opportunity to become
2 foster parents for their own kin, including
3 grandchildren, or to adopt their own kin, in-
4 cluding grandchildren, from foster care.

5 (B) According to the Williams Institute,
6 over 14,000 children are currently in foster
7 placements with gay, lesbian, and bisexual
8 adoptive and foster parents. Another 65,000
9 children are being raised by their adoptive par-
10 ents. If other States followed the minority of
11 States and discriminated against qualified indi-
12 viduals because of their sexual orientation or
13 marital status, foster care expenditures would
14 increase between \$87,000,000 and
15 \$130,000,000 per year in order to pay for addi-
16 tional institutional and group care, as well as to
17 recruit and train new foster and adoptive par-
18 ents.

19 (11) Some States allow 1 member of a same-
20 sex couple to adopt, but do not recognize both mem-
21 bers of the couple as the child's legal parents. Rec-
22 ognition of joint adoption provides children with the
23 same rights and security that children of hetero-
24 sexual parents enjoy. These protections include ac-
25 cess to both parents' health benefits; survivor's, So-

1 cial Security, and child support entitlements; legal
2 grounds for either parent to provide consent for
3 medical care, education, and other important deci-
4 sions; as well as the establishment of permanency
5 for both parents and child.

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

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

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

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

25 (a) ACTIVITIES.—

1 (1) PROHIBITION.—An entity that receives Fed-
2 eral assistance or contracts with an entity that re-
3 ceives Federal assistance, and is involved in adoption
4 or foster care placements may not—

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

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

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

24 (2) DEFINITION.—In this subsection, the term
25 “placement decision” means the decision to place, or

1 to delay or deny the placement of, a child in a foster
2 care or an adoptive home, and includes the decision
3 of the agency or entity involved to seek the termi-
4 nation of birth parent rights or otherwise make a
5 child legally available for adoptive placement.

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

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

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

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

1 (2) identifying casework practices and proce-
2 dures inconsistent with this Act and providing guid-
3 ance and training to ensure the practices and proce-
4 dures are brought into compliance within the pre-
5 scribed period of time;

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

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

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

17 (e) DEADLINE FOR COMPLIANCE.—

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

1 (2) *AUTHORITY TO EXTEND DEADLINE.*—If a
2 State demonstrates to the satisfaction of the Sec-
3 retary of Health and Human Services that it is nec-
4 essary to amend State statutory law in order to
5 change a particular practice that is inconsistent with
6 this section, the Secretary may extend the compli-
7 ance date for the State a reasonable number of days
8 after the close of the 1st State legislative session be-
9 ginning after the date the guidance referred to in
10 subsection (c) is published.

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

18 (f) *GAO STUDY.*—

19 (1) *IN GENERAL.*—Within 5 years after the
20 date of the 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.—Within 1 year
23 after completing the study required by paragraph
24 (1), the Comptroller General shall submit to the

- 1 Congress a written report that contains the results
- 2 of the study.

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