

115TH CONGRESS
2D SESSION

S. 2584

To end discrimination based on actual or perceived sexual orientation or gender identity in public schools, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 21, 2018

Ms. BALDWIN (for herself, Mr. BENNET, Mr. BOOKER, Mr. CARDIN, Mr. CARPER, Mr. CASEY, Mr. COONS, Mr. DURBIN, Mrs. FEINSTEIN, Mrs. GILLIBRAND, Ms. HASSAN, Ms. HEITKAMP, Ms. HIRONO, Mr. JONES, Mr. KAINE, Ms. KLOBUCHAR, Mr. LEAHY, Mr. MARKEY, Mr. MURPHY, Mrs. MURRAY, Mr. REED, Ms. SMITH, Ms. STABENOW, Ms. WARREN, Mr. WHITEHOUSE, Mr. BLUMENTHAL, Ms. CANTWELL, Ms. DUCKWORTH, Ms. HARRIS, Mr. MERKLEY, Mr. SANDERS, Mr. SCHATZ, Mrs. SHAHEEN, Mr. UDALL, Mr. VAN HOLLEN, and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To end discrimination based on actual or perceived sexual orientation or gender identity in public schools, and for other purposes.

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 “Student Non-Discrimi-
5 nation Act of 2018”.

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) FINDINGS.—Congress makes the following find-
3 ings:

4 (1) Public school students who are lesbian, gay,
5 bisexual, or transgender (referred to in this Act as
6 “LGBT”), or are perceived to be LGBT, or who as-
7 sociate with LGBT people, have been and are sub-
8 jected to pervasive discrimination, including harass-
9 ment, bullying, intimidation, and violence, and have
10 been deprived of equal educational opportunities, in
11 schools in every part of the Nation.

12 (2) While discrimination of any kind is harmful
13 to students and to the education system, actions
14 that target students based on sexual orientation or
15 gender identity represent a distinct and severe prob-
16 lem that remains inconsistently and inadequately ad-
17 dressed by current Federal law.

18 (3) Numerous social science studies demon-
19 strate that discrimination at school has contributed
20 to high rates of absenteeism, academic underachieve-
21 ment, dropping out, and adverse physical and mental
22 health consequences among LGBT youth.

23 (4) When left unchecked, discrimination in
24 schools based on sexual orientation or gender iden-
25 tity can lead, and has led, to life-threatening violence
26 and to suicide.

1 (5) Public school students enjoy a variety of
2 constitutional rights, including rights to equal pro-
3 tection, privacy, and free expression, which are in-
4 fringed when school officials engage in or fail to take
5 prompt and effective action to stop discrimination on
6 the basis of sexual orientation or gender identity.

7 (6) Provisions of Federal statutory law ex-
8 pressly prohibit discrimination on the basis of race,
9 color, sex, religion, disability, and national origin.
10 Numerous Federal courts have correctly interpreted
11 the prohibitions on sex discrimination to include dis-
12 crimination based on sex stereotypes, sexual orienta-
13 tion, and gender identity. However, the absence of
14 express Federal law prohibitions on discrimination
15 on the basis of sexual orientation and gender iden-
16 tity has created unnecessary uncertainty that risks
17 limiting access to legal remedies under Federal law
18 for LGBT students and their parents.

19 (b) PURPOSES.—The purposes of this Act are—

20 (1) to ensure that all students have access to
21 public education in a safe environment free from dis-
22 crimination, including harassment, bullying, intimi-
23 dation, and violence, on the basis of sexual orienta-
24 tion or gender identity;

1 (2) to provide a comprehensive, explicit Federal
2 prohibition, in addition to existing protections under
3 Federal prohibitions on sex discrimination, of dis-
4 crimination in public schools based on actual or per-
5 ceived sexual orientation or gender identity;

6 (3) to provide meaningful and effective rem-
7 edies for discrimination in public schools based on
8 actual or perceived sexual orientation or gender
9 identity;

10 (4) to invoke congressional powers, including
11 the power to enforce the 14th Amendment to the
12 Constitution of the United States and to provide for
13 the general welfare pursuant to section 8 of article
14 I of the Constitution and the power to make all laws
15 necessary and proper for the execution of the fore-
16 going powers pursuant to section 8 of article I of the
17 Constitution, in order to prohibit discrimination in
18 public schools on the basis of sexual orientation or
19 gender identity; and

20 (5) to allow the Department of Education and
21 the Department of Justice to effectively combat dis-
22 crimination based on sexual orientation and gender
23 identity in public schools, through regulation and en-
24 forcement, as the Departments have issued regula-
25 tions under and enforced title IX of the Education

1 Amendments of 1972 (20 U.S.C. 1681 et seq.) and
2 other nondiscrimination laws in a manner that effec-
3 tively addresses discrimination.

4 **SEC. 3. DEFINITIONS AND RULE.**

5 (a) DEFINITIONS.—For purposes of this Act:

6 (1) EDUCATIONAL AGENCY.—The term “edu-
7 cational agency” means a local educational agency,
8 an educational service agency, or a State educational
9 agency, as those terms are defined in section 8101
10 of the Elementary and Secondary Education Act of
11 1965 (20 U.S.C. 7801).

12 (2) GENDER IDENTITY.—The term “gender
13 identity” means the gender-related identity, appear-
14 ance, or mannerisms or other gender-related charac-
15 teristics of an individual, with or without regard to
16 the individual’s designated sex at birth.

17 (3) HARASSMENT.—The term “harassment”
18 means conduct that is sufficiently severe, persistent,
19 or pervasive to limit a student’s ability to participate
20 in or benefit from a program or activity of a public
21 school or educational agency, including acts of
22 verbal, nonverbal, or physical aggression, intimidat-
23 ion, or hostility, if such conduct is based on—

24 (A) a student’s actual or perceived sexual
25 orientation or gender identity; or

1 (B) the actual or perceived sexual orienta-
2 tion or gender identity of a person with whom
3 a student associates or has associated.

4 (4) PROGRAM OR ACTIVITY.—The terms “pro-
5 gram or activity” and “program” have the same
6 meanings given such terms as applied under section
7 606 of the Civil Rights Act of 1964 (42 U.S.C.
8 2000d–4a) to the operations of public entities under
9 paragraph (2)(B) of such section.

10 (5) PUBLIC SCHOOL.—The term “public
11 school” means an elementary school (as the term is
12 defined in section 8101 of the Elementary and Sec-
13 ondary Education Act of 1965 (20 U.S.C. 7801))
14 that is a public institution, and a secondary school
15 (as so defined) that is a public institution.

16 (6) SEXUAL ORIENTATION.—The term “sexual
17 orientation” means homosexuality, heterosexuality,
18 or bisexuality.

19 (7) STUDENT.—The term “student” means an
20 individual within the age limits for which the State
21 provides free public education who is enrolled in a
22 public school or who, regardless of official enroll-
23 ment status, attends classes or participates in the
24 programs or activities of a public school or local edu-
25 cational agency.

1 (b) RULE.—Consistent with Federal law, in this Act
2 the term “includes” means “includes but is not limited
3 to”.

4 **SEC. 4. PROHIBITION AGAINST DISCRIMINATION.**

5 (a) IN GENERAL.—No student shall, on the basis of
6 actual or perceived sexual orientation or gender identity
7 of such individual or of a person with whom the student
8 associates or has associated, be excluded from participa-
9 tion in, be denied the benefits of, or be subjected to dis-
10 crimination under any program or activity receiving Fed-
11 eral financial assistance.

12 (b) HARASSMENT.—For purposes of this Act, dis-
13 crimination includes harassment of a student on the basis
14 of actual or perceived sexual orientation or gender identity
15 of such student or of a person with whom the student as-
16 sociates or has associated.

17 (c) RETALIATION PROHIBITED.—

18 (1) PROHIBITION.—No person shall be excluded
19 from participation in, be denied the benefits of, or
20 be subjected to discrimination, retaliation, or re-
21 prisal under any program or activity receiving Fed-
22 eral financial assistance based on the person’s oppo-
23 sition to conduct made unlawful by this Act.

1 (2) DEFINITION.—For purposes of this sub-
2 section, “opposition to conduct made unlawful by
3 this Act” includes—

4 (A) opposition to conduct believed to be
5 made unlawful by this Act or conduct that
6 could be believed to become unlawful under this
7 Act if allowed to continue;

8 (B) any formal or informal report, whether
9 oral or written, to any governmental entity, in-
10 cluding public schools and educational agencies
11 and employees of the public schools or edu-
12 cational agencies, regarding conduct made un-
13 lawful by this Act, conduct believed to be made
14 unlawful by this Act, or conduct that could be
15 believed to become unlawful under this Act if
16 allowed to continue;

17 (C) participation in any investigation, pro-
18 ceeding, or hearing related to conduct made un-
19 lawful by this Act, conduct believed to be made
20 unlawful by this Act, or conduct that could be
21 believed to become unlawful under this Act if
22 allowed to continue; and

23 (D) assistance or encouragement provided
24 to any other person in the exercise or enjoy-

1 ment of any right granted or protected by this
2 Act,
3 if in the course of that expression, the person in-
4 volved does not purposefully provide information
5 known to be false to any public school or educational
6 agency or other governmental entity regarding con-
7 duct made unlawful by this Act, or conduct believed
8 to be made unlawful by this Act, or conduct that
9 could be believed to become unlawful under this Act
10 if allowed to continue.

11 **SEC. 5. FEDERAL ADMINISTRATIVE ENFORCEMENT; RE-**
12 **PORT TO CONGRESSIONAL COMMITTEES.**

13 (a) REQUIREMENTS.—Each Federal department and
14 agency which is empowered to extend Federal financial as-
15 sistance to any education program or activity, by way of
16 grant, loan, or contract other than a contract of insurance
17 or guaranty, is authorized and directed to effectuate the
18 provisions of section 4 with respect to such program or
19 activity by issuing rules, regulations, or orders of general
20 applicability which shall be consistent with achievement of
21 the objectives of the statute authorizing the financial as-
22 sistance in connection with which the action is taken. No
23 such rule, regulation, or order shall become effective un-
24 less and until approved by the President.

1 (b) ENFORCEMENT.—Compliance with any require-
2 ment adopted pursuant to this section may be effected—

3 (1) by the termination of or refusal to grant or
4 to continue assistance under such program or activ-
5 ity to any recipient as to whom there has been an
6 express finding on the record, after opportunity for
7 hearing, of a failure to comply with such require-
8 ment, but such termination or refusal shall be lim-
9 ited to the particular political entity, or part thereof,
10 or other recipient as to whom such a finding has
11 been made, and shall be limited in its effect to the
12 particular program, or part thereof, in which such
13 noncompliance has been so found; or

14 (2) by any other means authorized by law,
15 except that no such action shall be taken until the depart-
16 ment or agency concerned has advised the appropriate per-
17 son or persons of the failure to comply with the require-
18 ment and has determined that compliance cannot be se-
19 cured by voluntary means.

20 (c) REPORTS.—In the case of any action terminating,
21 or refusing to grant or continue, assistance because of fail-
22 ure to comply with a requirement imposed pursuant to this
23 section, the head of the Federal department or agency
24 shall file with the committees of the House of Representa-
25 tives and Senate having legislative jurisdiction over the

1 program or activity involved a full written report of the
2 circumstances and the grounds for such action. No such
3 action shall become effective until 30 days have elapsed
4 after the filing of such report.

5 **SEC. 6. PRIVATE CAUSE OF ACTION.**

6 (a) PRIVATE CAUSE OF ACTION.—Subject to sub-
7 section (c), and consistent with the cause of action recog-
8 nized under title VI of the Civil Rights Act of 1964 (42
9 U.S.C. 2000d et seq.) and title IX of the Education
10 Amendments of 1972 (20 U.S.C. 1681 et seq.), an ag-
11 grieved individual may bring an action in a court of com-
12 petent jurisdiction, asserting a violation of this Act. Ag-
13 grieved individuals may be awarded all appropriate relief,
14 including equitable relief, compensatory damages, and
15 costs of the action.

16 (b) RULE OF CONSTRUCTION.—This section shall not
17 be construed to preclude an aggrieved individual from ob-
18 taining remedies under any other provision of law or to
19 require such individual to exhaust any administrative com-
20 plaint process or notice of claim requirement before seek-
21 ing redress under this section.

22 (c) STATUTE OF LIMITATIONS.—For actions brought
23 pursuant to this section, the statute of limitations period
24 shall be determined in accordance with section 1658(a) of
25 title 28, United States Code. The tolling of any such limi-

1 tations period shall be determined in accordance with the
2 law governing actions under section 1979 of the Revised
3 Statutes (42 U.S.C. 1983) in the State in which the action
4 is brought.

5 **SEC. 7. CAUSE OF ACTION BY THE ATTORNEY GENERAL.**

6 The Attorney General is authorized to institute for
7 or in the name of the United States a civil action for a
8 violation of this Act in any appropriate district court of
9 the United States against such parties and for such relief
10 as may be appropriate, including equitable relief and com-
11 pensatory damages. Whenever a civil action is instituted
12 for a violation of this Act, the Attorney General may inter-
13 vene in such action upon timely application and shall be
14 entitled to the same relief as if the Attorney General had
15 instituted the action. Nothing in this Act shall adversely
16 affect the right of any person to sue or obtain relief in
17 any court for any activity that violates this Act, including
18 regulations promulgated pursuant to this Act.

19 **SEC. 8. STATE IMMUNITY.**

20 (a) STATE IMMUNITY.—A State shall not be immune
21 under the 11th Amendment to the Constitution of the
22 United States from suit in Federal court for a violation
23 of this Act.

24 (b) WAIVER.—A State's receipt or use of Federal fi-
25 nancial assistance for any program or activity of a State

1 shall constitute a waiver of sovereign immunity, under the
2 11th Amendment or otherwise, to a suit brought by an
3 aggrieved individual for a violation of section 4.

4 (c) REMEDIES.—In a suit against a State for a viola-
5 tion of this Act, remedies (including remedies both at law
6 and in equity) are available for such a violation to the
7 same extent as such remedies are available for such a vio-
8 lation in the suit against any public or private entity other
9 than a State.

10 **SEC. 9. ATTORNEY'S FEES.**

11 Section 722(b) of the Revised Statutes (42 U.S.C.
12 1988(b)) is amended by inserting “the Student Non-Dis-
13 crimination Act of 2018,” after “Religious Land Use and
14 Institutionalized Persons Act of 2000,”.

15 **SEC. 10. EFFECT ON OTHER LAWS.**

16 (a) FEDERAL AND STATE NONDISCRIMINATION
17 LAWS.—Nothing in this Act shall be construed to pre-
18 empt, invalidate, or limit rights, remedies, procedures, or
19 legal standards available to victims of discrimination or
20 retaliation, under any other Federal law or law of a State
21 or political subdivision of a State, including titles IV and
22 VI of the Civil Rights Act of 1964 (42 U.S.C. 2000e et
23 seq.; 2000d et seq.), title IX of the Education Amend-
24 ments of 1972 (20 U.S.C. 1681 et seq.), section 504 of
25 the Rehabilitation Act of 1973 (29 U.S.C. 794), the Amer-

1 icans with Disabilities Act of 1990 (42 U.S.C. 12101 et
2 seq.), or section 1979 of the Revised Statutes (42 U.S.C.
3 1983). The obligations imposed by this Act are in addition
4 to those imposed by titles IV and VI of the Civil Rights
5 Act of 1964 (42 U.S.C. 2000c et seq.; 2000d et seq.), title
6 IX of the Education Amendments of 1972 (20 U.S.C.
7 1681 et seq.), section 504 of the Rehabilitation Act of
8 1973 (29 U.S.C. 794), the Americans with Disabilities Act
9 of 1990 (42 U.S.C. 12101 et seq.), and section 1979 of
10 the Revised Statutes (42 U.S.C. 1983).

11 (b) **FREE SPEECH AND EXPRESSION LAWS AND RE-**
12 **LIGIOUS STUDENT GROUPS.**—Nothing in this Act shall be
13 construed to alter legal standards regarding, or affect the
14 rights available to individuals or groups under, other Fed-
15 eral laws that establish protections for freedom of speech
16 and expression, such as legal standards and rights avail-
17 able to religious and other student groups under the First
18 Amendment and the Equal Access Act (20 U.S.C. 4071
19 et seq.).

20 **SEC. 11. SEVERABILITY.**

21 If any provision of this Act, or any application of such
22 provision to any person or circumstance, is held to be un-
23 constitutional, the remainder of this Act, and the applica-
24 tion of the provision to any other person or circumstance
25 shall not be impacted.

1 **SEC. 12. EFFECTIVE DATE.**

2 This Act shall take effect 60 days after the date of
3 enactment of this Act and shall not apply to conduct oc-
4 ccurring before the effective date of this Act.

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