

111TH CONGRESS
2D SESSION

S. 3065

To amend title 10, United States Code, to enhance the readiness of the Armed Forces by replacing the current policy concerning homosexuality in the Armed Forces, referred to as “Don’t Ask, Don’t Tell”, with a policy of nondiscrimination on the basis of sexual orientation.

IN THE SENATE OF THE UNITED STATES

MARCH 3, 2010

Mr. LIEBERMAN (for himself, Mr. LEVIN, Mr. UDALL of Colorado, Mrs. GILLIBRAND, Mr. BURRIS, Mr. BINGAMAN, Mrs. BOXER, Mr. WYDEN, Mr. LEAHY, Mr. SPECTER, Mr. MERKLEY, Mrs. FEINSTEIN, Mr. FRANKEN, and Mr. CARDIN) introduced the following bill; which was read twice and referred to the Committee on Armed Services

A BILL

To amend title 10, United States Code, to enhance the readiness of the Armed Forces by replacing the current policy concerning homosexuality in the Armed Forces, referred to as “Don’t Ask, Don’t Tell”, with a policy of nondiscrimination on the basis of sexual orientation.

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 “Military Readiness En-
5 hancement Act of 2010”.

1 **SEC. 2. PURPOSE.**

2 The purpose of this Act is to institute in the Armed
3 Forces a policy of nondiscrimination based on sexual ori-
4 entation.

5 **SEC. 3. REPEAL OF 1993 POLICY CONCERNING HOMOSEX-**
6 **UALITY IN THE ARMED FORCES.**

7 The following provisions of law are repealed:

- 8 (1) Section 654 of title 10, United States Code.
9 (2) Subsections (b), (c), and (d) of section 571
10 of the National Defense Authorization Act for Fiscal
11 Year 1994 (10 U.S.C. 654 note).

12 **SEC. 4. ESTABLISHMENT OF POLICY OF NONDISCRIMINA-**
13 **TION BASED ON SEXUAL ORIENTATION IN**
14 **THE ARMED FORCES.**

15 (a) ESTABLISHMENT OF POLICY.—

- 16 (1) IN GENERAL.—Chapter 37 of title 10,
17 United States Code, is amended by adding at the
18 end the following new section:

19 **“§ 656. Policy of nondiscrimination based on sexual**
20 **orientation in the armed forces**

21 “(a) POLICY.—The Secretary of Defense, and the
22 Secretary of Homeland Security with respect to the Coast
23 Guard when it is not operating as a service in the Navy,
24 may not discriminate on the basis of sexual orientation
25 against any member of the armed forces or against any
26 person seeking to become a member of the armed forces.

1 “(b) DISCRIMINATION ON BASIS OF SEXUAL ORI-
2 ENTATION.—For purposes of this section, discrimination
3 on the basis of sexual orientation is—

4 “(1) in the case of a member of the armed
5 forces, the taking of any personnel or administrative
6 action (including any action relating to promotion,
7 demotion, evaluation, selection for an award, selec-
8 tion for a duty assignment, transfer, or separation)
9 in whole or in part on the basis of sexual orienta-
10 tion; and

11 “(2) in the case of a person seeking to become
12 a member of the armed forces, denial of accession
13 into the armed forces in whole or in part on the
14 basis of sexual orientation.

15 “(c) PERSONNEL AND ADMINISTRATIVE POLICIES
16 AND ACTION.—The Secretary of Defense, and the Sec-
17 retary of Homeland Security with respect to the Coast
18 Guard when it is not operating as a service in the Navy,
19 may not establish, implement, or apply any personnel or
20 administrative policy, or take any personnel or administra-
21 tive action (including any policy or action relating to pro-
22 motions, demotions, evaluations, selections for awards, se-
23 lections for duty assignments, transfers, or separations)
24 in whole or in part on the basis of sexual orientation.

1 “(d) RULES AND POLICIES REGARDING CONDUCT.—
2 Nothing in this section prohibits the Secretary of Defense,
3 and the Secretary of Homeland Security with respect to
4 the Coast Guard when it is not operating as a service in
5 the Navy, from prescribing or enforcing regulations gov-
6 erning the conduct of members of the armed forces if the
7 regulations are designed and applied without regard to
8 sexual orientation.

9 “(e) RE-ACCESSION OF OTHERWISE QUALIFIED
10 PERSONS PERMITTED.—Any person separated from the
11 armed forces on the basis of sexual orientation in accord-
12 ance with laws and regulations in effect before the date
13 of the enactment of this section, if otherwise qualified for
14 re-accession into the armed forces, shall not be prohibited
15 from re-accession into the armed forces on the sole basis
16 of such separation.

17 “(f) SEXUAL ORIENTATION.—In this section, the
18 term ‘sexual orientation’ means heterosexuality, homosex-
19 uality, or bisexuality, whether the orientation is real or
20 perceived, and includes statements and consensual sexual
21 conduct that is not otherwise illegal manifesting hetero-
22 sexuality, homosexuality, or bisexuality.”.

23 (2) CLERICAL AMENDMENTS.—The table of sec-
24 tions at the beginning of chapter 37 of such title is
25 amended—

1 (A) by striking the item relating to section
2 654; and

3 (B) by adding at the end the following new
4 item:

“656. Policy of nondiscrimination based on sexual orientation in the armed
forces.”.

5 (b) CONFORMING AMENDMENTS.—Title 10, United
6 States Code, is amended as follows:

7 (1) Section 481 is amended—

8 (A) In subsection (a)(2), by inserting “, in-
9 cluding sexual orientation discrimination,” after
10 “discrimination” in subparagraphs (C) and (D);
11 and

12 (B) in subsection (c), by inserting “and
13 sexual orientation-based” after “gender-based”
14 both places it appears.

15 (2) Section 983(a)(1) is amended by striking
16 “(in accordance with section 654 of this title and
17 other applicable Federal laws)”.

18 (3) Section 1034(i)(3) is amended by inserting
19 “sexual orientation,” after “sex.”.

20 **SEC. 5. BENEFITS.**

21 Nothing in this Act, or the amendments made by this
22 Act, shall be construed to require the furnishing of de-
23 pendent benefits in violation of section 7 of title 1, United
24 States Code (relating to the definitions of “marriage” and

1 “spouse” and referred to as the “Defense of Marriage
2 Act”).

3 **SEC. 6. NO PRIVATE CAUSE OF ACTION FOR DAMAGES.**

4 Nothing in this Act, or the amendments made by this
5 Act, shall be construed to create a private cause of action
6 for damages.

7 **SEC. 7. REVIEW AND IMPLEMENTATION.**

8 (a) PENTAGON WORKING GROUP.—

9 (1) ESTABLISHMENT.—The Secretary of De-
10 fense shall establish in the Department of Defense
11 a working group (to be known as the “Pentagon
12 Working Group”) to make recommendations to the
13 Secretary regarding the implementation of this Act
14 and the amendments made by this Act.

15 (2) TREATMENT OF EXISTING WORKING
16 GROUP.—If there exists in the Department as of the
17 date of the enactment of this Act a working group
18 on recommendations regarding the repeal of section
19 654 of title 10, United States Code, the Secretary
20 may treat the working group as the working group
21 required by paragraph (1) for purposes of this sec-
22 tion.

23 (b) WORKING GROUP RECOMMENDATIONS.—

24 (1) SUBMITTAL TO SECRETARY OF DEFENSE.—

25 Not later than 270 days after the date of the enact-

1 ment of this Act, the working group under sub-
2 section (a) shall submit to the Secretary of Defense
3 a written report setting forth such recommendations
4 as the working group considers appropriate for a re-
5 vision of Department of Defense regulations, or the
6 issuance of new regulations, to implement this Act
7 and the amendments made by this Act.

8 (2) SUBMITTAL TO CONGRESS.—The report
9 under paragraph (1) shall also be submitted to the
10 Committees on Armed Services of the Senate and
11 the House of Representatives.

12 (c) REGULATIONS.—

13 (1) REVISIONS REQUIRED.—Not later than 60
14 days after receipt of the report required by sub-
15 section (b)(1), the Secretary of Defense shall revise
16 Department of Defense regulations, and shall issue
17 such new regulations as may be necessary, to imple-
18 ment this Act and the amendments made by this
19 Act. The Secretary of Defense shall further direct
20 the Secretary of each military department to revise
21 regulations of that military department in accord-
22 ance with this Act, not later than 120 days after the
23 Secretary of Defense receives the report required by
24 subsection (b)(1).

1 (2) ELEMENTS.—The revisions required by
2 paragraph (1) shall include the following:

3 (A) Revision of all equal opportunity and
4 human relations regulations, directives, and in-
5 structions to add sexual orientation non-
6 discrimination to the Department of Defense
7 Equal Opportunity policy and to related human
8 relations training programs.

9 (B) Revision of Department of Defense
10 and military department personnel regulations
11 to eliminate procedures for involuntary dis-
12 charges based on sexual orientation.

13 (C) Revision of Department of Defense
14 and military department regulations governing
15 victims' advocacy programs to include sexual
16 orientation discrimination among the forms of
17 discrimination for which members of the Armed
18 Forces and their families may seek assistance.

19 (D) Revision of any Department of De-
20 fense and military department regulations as
21 necessary to ensure that regulations governing
22 the personal conduct of members of the Armed
23 Forces are written and enforced without regard
24 to sexual orientation.

1 (d) SEXUAL ORIENTATION DEFINED.—In this sec-
2 tion, the term “sexual orientation” has the meaning given
3 that term in section 656(f) of title 10, United States Code,
4 as added by section 4(a).

5 **SEC. 8. REPORT.**

6 Not later than 180 days after the date of the enact-
7 ment of this Act, the Secretary of Defense shall submit
8 to the Committees on Armed Services of the Senate and
9 the House of Representatives a report setting forth an as-
10 sessment of the compliance of institutions of higher edu-
11 cation with section 983 of title 10, United States Code
12 (as amended by section 4(b)), and describing the actions,
13 if any, taken by the Secretary to effect the denial of funds
14 authorized in that section to an institution of higher edu-
15 cation that continues to prohibit, or in effect prevent, the
16 Secretary or a military department from maintaining, es-
17 tablishing, or operating a unit of the Senior Reserve Offi-
18 cers’ Training Corps at that institution (or any subele-
19 ment of that institution).

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