

111TH CONGRESS
1ST SESSION

H. R. 3827

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

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 15, 2009

Mr. STARK 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 identification, or marital status of any prospective adoptive or foster parent.

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.—The 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 identification, and marital
8 status discrimination and bias in adoption and foster
9 care recruitment, selection, and placement proce-
10 dures.

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

15 (A) Fifty-one thousand children were
16 adopted in 2007, while 25,000 youth “aged
17 out” of the foster 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) As of 2007, gay, lesbian, and bisexual par-
4 ents were raising 4 percent of all adopted children
5 and fostering for 3 percent of all foster children. A
6 report from the Evan B. Donaldson Institute found
7 that an additional 2,000,000 gay, lesbian, and bisex-
8 ual individuals are interested in adoption.

9 (5) According to the Urban Institute, same-sex
10 couples raising adopted children tend to be older,
11 more educated, and have more economic resources
12 than other adoptive parents. Studies confirm that
13 children with same-sex parents have the same ad-
14 vantages and same expectations for health, social
15 and psychological adjustment, and development as
16 children whose parents are heterosexual.

17 (6) An Evan B. Donaldson Adoption Institute
18 study found that one-third of child welfare agencies
19 in the United States currently reject gay, lesbian,
20 and bisexual applicants, citing a conflict with the re-
21 ligious beliefs associated with the agency, State law
22 prohibiting placement with gay, lesbian, or bisexual
23 parents, or a policy of placing children with married-
24 heterosexual only couples.

1 (A) The practice of prohibiting applicants
2 from becoming foster parents or adopting chil-
3 dren solely on the basis of sexual orientation or
4 marital status has resulted in reducing the
5 number of qualified adoptive and foster parents
6 overall and denying gay, lesbian, bisexual, and
7 unmarried relatives the opportunity to become
8 foster parents for their own kin, including
9 grandchildren, or to adopt their own kin, in-
10 cluding grandchildren, from foster care.

11 (B) Over 14,000 children are currently in
12 placements with gay, lesbian, and bisexual
13 adoptive and foster parents. If other States fol-
14 lowed the minority of States and discriminated
15 against qualified individuals because of their
16 sexual orientation or marital status, foster care
17 expenditures would increase between
18 \$87,000,000 and \$130,000,000 per year in
19 order to pay for additional institutional and
20 group care, as well as to recruit and train new
21 foster and adoptive parents.

22 (7) Some States allow 1 member of a same-sex
23 couple to adopt, but do not recognize both members
24 of the couple as the child's legal parents. Recogni-
25 tion of joint and second-parent adoption provides

1 children with the same rights and security that chil-
2 dren of heterosexual parents enjoy. These protec-
3 tions include access to both parents' health benefits;
4 survivor's, Social Security, and child support entitle-
5 ments; legal grounds for either parent to provide
6 consent for medical care, education, and other im-
7 portant decisions; as well as the establishment of
8 permanency for both parents and child.

9 (8) Professional organizations in the fields of
10 medicine, law, and child welfare have taken official
11 positions in support of the ability of qualified gay,
12 lesbian, bisexual, and unmarried couples to foster
13 and adopt, as supported by scientific research show-
14 ing sexual orientation as a nondeterminative factor
15 in parental success.

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

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

24 (a) ACTIVITIES.—

1 (1) PROHIBITION.—An entity that receives Fed-
2 eral assistance and is involved in adoption or foster
3 care placements may not—

4 (A) categorically deny to any person the
5 opportunity to become an adoptive or a foster
6 parent solely on the basis of the sexual orienta-
7 tion, gender identification, or marital status of
8 the person;

9 (B) delay or deny the placement of a child
10 for adoption or into foster care, or otherwise
11 discriminate in making a placement decision,
12 solely on the basis of the sexual orientation,
13 gender identification, or marital status of any
14 prospective adoptive or foster parent; or

15 (C) deny or limit the parental rights of an
16 adoptive parent based on the adoptive parent’s
17 sexual orientation, gender identification, or
18 marital status.

19 (2) DEFINITION.—In this subsection, the term
20 “placement decision” means the decision to place, or
21 to delay or deny the placement of, a child in a foster
22 care or an adoptive home, and includes the decision
23 of the agency or entity involved to seek the termi-
24 nation of birth parent rights or otherwise make a
25 child legally available for adoptive placement.

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

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

10 (d) **DEADLINE FOR COMPLIANCE.**—

11 (1) **IN GENERAL.**—Except as provided in para-
12 graph (2), an entity that receives Federal assistance
13 and is involved with adoption or foster care place-
14 ments shall comply with this section not later than
15 6 months after publication of the guidance referred
16 to in subsection (c), or 1 year after the date of the
17 enactment of this Act, whichever occurs first.

18 (2) **AUTHORITY TO EXTEND DEADLINE.**—If a
19 State demonstrates to the satisfaction of the Sec-
20 retary of Health and Human Services that it is nec-
21 essary to amend State statutory law in order to
22 change a particular practice that is inconsistent with
23 this section, the Secretary may extend the compli-
24 ance date for the State a reasonable number of days
25 after the close of the first State legislative session

1 beginning after the date the guidance referred to in
2 subsection (c) is published.

3 (3) AUTHORITY TO WITHHOLD FUNDS.—If a
4 State fails to comply with this section, the Secretary
5 may withhold payment to the State of amounts oth-
6 erwise payable to the State under part B or E of
7 title IV of the Social Security Act, to the extent the
8 Secretary deems the withholding necessary to induce
9 the State into compliance with this section.

10 (e) GAO STUDY.—

11 (1) IN GENERAL.—Within 5 years after the
12 date of the enactment of this Act, the Comptroller
13 General of the United States shall conduct a study
14 to determine whether the States have substantially
15 complied with this Act, including specifically whether
16 the States have—

17 (A) eliminated policies, practices, or stat-
18 utes that deny to any otherwise qualified person
19 the opportunity to become an adoptive or foster
20 parent solely on the basis of the sexual orienta-
21 tion, gender identification, or marital status of
22 the person;

23 (B) removed all program, policy, or statu-
24 tory barriers that delay or deny the placement
25 of a child for adoption or into foster care, or

1 otherwise discriminate in making a placement
2 decision, solely on the basis of the sexual ori-
3 entation, gender identification, or marital status
4 of any qualified, prospective adoptive or foster
5 parent; and

6 (C) eliminated all policies, practices, or
7 statutes that deny or limit the parental rights
8 of an adoptive parent based on the adoptive
9 parent's sexual orientation, gender identifica-
10 tion, or marital status.

11 (2) REPORT TO THE CONGRESS.—Within 1 year
12 after completing the study required by paragraph
13 (1), the Comptroller General shall submit to the
14 Congress a written report that contains the results
15 of the study.

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