Recommendation

That the Pennsylvania Bar Association ("PBA") calls on members of the United States Congress to enact, and the President of the United States to sign, House of Representatives Bill 5 and its companion legislation Senate Bill 393 ("Equality Act") or any similar legislation, which would amend federal law by:

1. Prohibiting discrimination based on sex, sexual orientation, and gender identity in public accommodations and facilities, education, federal funding, employment, housing, credit, and the jury system by defining and expressly including sex, sexual orientation, and gender identity among the characteristics for which discrimination or segregation is prohibited;

2. Expanding protection against discrimination based on protected characteristics (including race) by defining public accommodations to include exhibitions, recreation, exercise, amusement, gatherings, displays, goods, services, programs, and/or transportation services;

3. Authorizing the Department of Justice to intervene in equal protection actions in federal court on account of sexual orientation and/or gender identity; and

4. Prohibiting an individual from being denied access to a shared facility, including a restroom, locker room, or dressing room, that is in accordance with the individual’s gender identity.

That the PBA President and/or the President's designee(s) shall communicate its position to members of the United States Congress, the Supreme Court of the United States, the legal profession, the public, and any other person or entity when and as appropriate. The President and/or the President's designee(s) shall take such other action as may be necessary to effectuate this Recommendation, including but not limited to supporting all litigation that would further the changes in federal law as so identified by the Equality Act.

Report

The Lesbian, Gay, Bisexual, Transgender, Queer plus (LGBTQ+) community has faced a long and coordinated affront to their civil and human rights throughout the history of the United States. On a frequent and daily basis, LGBTQ+ people—like other historically oppressed
communities protected by federal anti-discrimination law—experience discrimination on the basis of their actual and/or perceived sexual orientation and/or gender identity, which interferes with their ability to obtain employment, housing, education, public assistance, health care and other services. This discrimination is well known and has been widely studied and demonstrated. Despite monumental (and fragile) gains in de jure protection in some areas of civic life, LGBTQ+ people continue to be systematically denied equal protection under the law. Action is required to root out and provide remedies for such insidious conduct, and the Equality Act directly addresses this need.

I. What the Equality Act Would Do

The purpose of the Equality Act as passed by the House of Representatives on February 25, 2021 is to “expand as well as clarify, confirm and create greater consistency in the protections and remedies against discrimination on the basis of all covered characteristics and to provide guidance and notice to individuals, organizations, corporations, and agencies regarding their obligations under the law.” Sec. 2(b).

By clarifying existing law, the Equality Act codifies *Bostock v. Clayton County*, 140 S. Ct. 1731, 1741 (2020). In *Bostock*, the Supreme Court of the United States with Justice Neil Gorsuch writing for the six-justice majority held that, under the federal prohibition on sex discrimination in employment ("Title VII"), “it is impossible” to discriminate against a person for being LGBTQ+ without discriminating against that individual on the basis of their sex. On that basis, the Court concluded “[a]n employer who fires an individual merely for being gay or transgender defies the law.”

Consistent with *Bostock* and other caselaw, the Equality Act expands and clarifies federal law as follows:

1. Amends prohibitions on discrimination or segregation in Title II (public accommodations) of the Civil Rights Act of 1964 to include “sex (including sexual orientation and gender identity).” Sec. 3(a)(1). At present, “sex” is not a protected characteristic.

2. Expands the definition of public accommodations in Title II for all protected characteristics, including race, to explicitly cover the following types of entities: (1) “stadium or other place of or establishment that provides exhibition, entertainment, recreation, exercise, amusement, public gathering, or public display”; (2) “any establishment that provides a good, service, or program, including a store, shopping center, online retailer or service provider, salon, bank, gas station, food bank, service or care center, shelter, travel agency, or funeral parlor, or establishment that provides health care, accounting, or legal services”; and (3) “any train service, bus service, car service, taxi service, airline service, station, depot, or other place of or establishment that provides transportation service.” Sec. 3(a)(2).
3. Prohibits de jure discrimination and segregation in Title II based on “sex (including sexual orientation and gender identity).” Sec. 3(b). At present, “sex” is not a protected characteristic.

4. Amends a rule of construction for Title II to construe an establishment as “includ[ing] an individual whose operations affect commerce and who is a provider of a good, service, or program” and not to construe an establishment as “limited to a physical facility or place.” Sec. 3(c).

5. Amends Title III of the Civil Rights Act of 1964 (desegregation of public facilities) to include “sex (including sexual orientation and gender identity)” among the characteristics that the Attorney General can intervene to prevent the “loss of [one’s] right to the equal protection of the laws.” Sec. 4. At present, “sex” is not a protected characteristic.

6. Amends the definition of sex under Title IV (public education)’s definition of “desegregation” to clarify that the term sex includes sexual orientation and gender identity. Sec. 5(a).

7. Amends the definition of sex in under the Attorney General’s authority in Title IV to intervene in a civil action when it “will materially further the orderly achievement of desegregation in public [college]” to clarify that on the basis of sex includes sexual orientation and gender identity. Sec. 5(b).

8. Amends a rule of construction in Title IV’s prohibition on “classification and assignment” of protected characteristics in public education to explicitly clarify that sex includes sexual orientation and gender identity. Sec. 5(c).

9. Amends Title V (federally assisted programs) of the Civil Rights Act of 1964 to include “sex (including sexual orientation and gender identity)” among the characteristics for which discrimination is prohibited in “any program or activity receiving Federal financial assistance.” Sec. 6.

10. Adds a new statute under Title VII (employment) stating the provisions described in Paragraph 24 of this Section of the Recommendation apply to Title VII “except that for purposes of that application, a reference in that section to an ‘unlawful practice’ shall be considered to be a reference to an ‘unlawful employment practice.’” Sec. 7(a). The effect of this change will be to further clarify those rules of construction as applied to Title VII’s provisions.
11. Clarifies references to Title VII’s prohibited employment practices and
discriminatory employment advertisements by adding “(including
sexual orientation and gender identity)” next to “sex” any time it appears
(including in any headings), except in 42 U.S.C. § 2000e–2(e) which
addresses “[b]usinesses or enterprises with personnel qualified on basis
of religion, sex, or national origin.” In that subsection and under
discriminatory employment advertisements, the Act would make clear
that sex as a bona fide occupational qualification requires recognizing
an individual’s sex “as qualified in accordance with their gender
identity.” Sec. 7(b), (c).

12. Clarifies that the definition of sex includes sexual orientation and gender
identity by making those terms explicit in several important civil rights
laws, including:

a. Title VII’s prohibition on admission or reinstatement by court
order when discrimination has occurred. Sec. 7(d);

b. Title VII’s prohibition on employment discrimination in the
federal government. Sec. 7(e);

c. The Government Employee Rights Act of 1991, which provides
anti-discrimination protections for certain government
employees previously exempt from Title VII’s protections. Sec.
7(f).

d. The Congressional Accountability Act of 1995, which applied
anti-discrimination laws to the United States Congress. Sec.
7(g)(1).

13. Adds a rule of construction that the provisions described in Paragraphs
23, 24, and 25 of this Section of the Recommendation apply to the
remedies available under the Congressional Accountability Act of 1995
except that age and disability should be inferred as among the listed
protected characteristics. Sec. 7(g)(2). The effect of this change would
be to create greater consistency in application of remedies and
interpretation of the Civil Rights Act of 1964, Age Discrimination in

14. Amends certain provisions of the Civil Service Reform Act of 1978 to
add “(including sexual orientation and gender identity)” next to sex.
Sec. 7(h).

15. Adds a rule of construction to certain sections of the Civil Rights Act of
1964 to interpret protected characteristics as including “age, a
handicapping condition, marital status, or political affiliation.” Sec.
7(h)(3).
16. Clarifies the definition of sex in under the Attorney General’s authority under the Civil Rights Act of 1964 to intervene in civil actions “seeking relief from the denial of equal protection of the laws under the fourteenth amendment to the Constitution” by expressly adding “(including sexual orientation or gender identity).” Sec. 8.

17. Adds a new section to the Civil Rights Act of 1964 which defines protected characteristics under Titles II, III, IV, VI, VII, and IX as including when the individual is “associated or has been associated” with the protected characteristic or there is a “a perception or belief, even if inaccurate,” concerning the protected characteristic. Sec. 9(2)(a)(1).

18. Defines “gender identity” under Titles II, III, IV, VI, VII, and IX as “the gender-related identity, appearance, mannerisms, or other gender-related characteristics of an individual, regardless of the individual’s designated sex at birth.” Sec. 9(2)(a)(2).

19. Defines “including” under Titles II, III, IV, VI, VII, and IX as “including, but not limited to.” Sec. 9(2)(a)(3).

20. Clarifies the definition of “sex” under Titles II, III, IV, VI, VII, and IX as: (1) “a sex stereotype”; (2) “pregnancy, childbirth, or a related medical condition”; (3) “sexual orientation or gender identity”; or (4) “sex characteristics, including intersex traits.” Sec. 9(2)(a)(4).

21. Defines “sexual orientation” under Titles II, III, IV, VI, VII, and IX as “homosexuality, heterosexuality, or bisexuality.” Sec. 9(2)(a)(5).

22. Mandates that “pregnancy, childbirth, or a related medical condition shall not receive less favorable treatment than other physical conditions” and that “an individual shall not be denied access to a shared facility, including a restroom, a locker room, and a dressing room, that is in accordance with the individual’s gender identity” under Titles II, III, IV, VI, VII, and IX. Sec. 9(2)(b)(1), (2).
23. Adds a new rule of construction to the Civil Rights Act of 1964 stating nothing in the Equality Act should be construed to: (1) “limit the protection against an unlawful practice on the basis of pregnancy, childbirth, or a related medical condition”; (2) “limit the protection against an unlawful practice on the basis of sex available under any provision of Federal law other than that covered title, prohibiting a practice on the basis of sex”; (3) “limit the claims or remedies available to any individual for an unlawful practice”; or (4) “support any inference that any Federal law prohibiting a practice on the basis of sex does not prohibit discrimination on the basis of pregnancy, childbirth, or a related medical condition, sexual orientation, gender identity, or a sex stereotype.” Sec. 9(3).

24. Adds a new rule of construction stating: “The Religious Freedom Restoration Act of 1993 . . . shall not provide a claim concerning, or a defense to a claim under, a covered title, or provide a basis for challenging the application or enforcement of a covered title.” Sec. 9(3).

25. Amends the Fair Housing Act to: (1) specify that the terms gender identity, sex, and sexual orientation have the same meanings as described in Paragraphs 17 to 22 of this Section of the Recommendation; (2) define protected characteristics as including whether the individual is “associated or has been associated” or is based on a “perception or belief, even if inaccurate”; and (3) clarify the definition of “sex” in Sections 804, 805, 806, 808(e)(6) as “including sexual orientation and gender identity.” Sec. 10(a)(1-5).

26. Adds new rules of construction to the Fair Housing Act to include consistent interpretations with the rules of construction for the Civil Rights Act of 1964. Sec. 10(a)(6).

27. Clarifies that 42 U.S.C. § 3631 of the Fair Housing Act expressly defines any reference to sex as “(including sexual orientation (as such term is defined in section 802 of this Act) and gender identity (as such term is defined in section 802 of this Act)).” Sec. 10(b).

28. Clarifies that the Equal Credit Opportunity Act’s prohibition on sex discrimination includes sexual orientation and gender identity. Sec. 11(a), (c).
29. Clarifies provisions of the Equal Credit Opportunity Act to: (1) specify that the terms gender identity, sex, and sexual orientation have the same meaning as described in Paragraphs 17 to 22 of this Section of the Recommendation; (2) define protected characteristics as including whether the individual is “associated or has been associated” or is based on a “a perception or belief, even if inaccurate,” (3) apply the provisions as described in Paragraphs 23 and 24 of this Section of the Recommendation to the Equal Credit Opportunity Act. Sec. 11(b). This would have the effect of creating greater consistency in interpretation between the Equal Credit Opportunity Act and the Civil Rights Act of 1964.

30. Applies the provision as described in Paragraph 25 of this Section of the Recommendation to the Equal Credit Opportunity Act’s provisions on civil liability. Sec. 11(d). This would have the effect of creating greater consistency in interpretation between the Equal Credit Opportunity Act and the Civil Rights Act of 1964.

31. Clarifies that federal prohibitions of sex discrimination in service as a grand or petit juror in the district courts of the United States or in the Court of International Trade includes “sexual orientation and gender identity.” Sec. 12(a)(1), (2).

32. Adds rules of construction to Chapter 121, Title 28 of the United States Code (statutes governing juries) to: (1) specify that the terms gender identity, sex, and sexual orientation have the same meanings as described in Paragraphs 17 to 22 of this Section of the Recommendation; (2) define protected characteristics as including whether the individual is “associated or has been associated” or is based on a “a perception or belief, even if inaccurate,” (3) apply the provisions as described in Paragraphs 23, 24, and 25 of this Section of the Recommendation to Chapter 121. Sec. 12(a)(3), (4).

II. History of the Equality Act

The earliest iteration of the Equality Act was first introduced in 1974. Since then, similar bills have been introduced in most sessions of Congress. In 2013, the United States Senate passed the Employment Non-Discrimination Act—a narrower version of the Equality Act—but the House of Representatives failed to further advance it.

In the current 117th Congress, the House of Representatives passed the Equality Act (H.R. 5) on February 25, 2021, and the Senate has yet to take any action on its companion bill, S. 393. Because of present Senate filibuster rules, sixty votes are required to pass the Equality Act in the Senate and allow its transmittal to President Joseph R. Biden for signature and enactment. If the
Senate fails to act by January 3, 2023, the Equality Act as passed in the House of Representatives will lapse and will have to be reintroduced in both chambers for enactment.

III. PBA Support for the Equality Act Is Consistent with Its History of Supporting Equal Rights

The PBA has long stood on the side of justice in promoting equal protection under the law and non-discrimination for historically oppressed communities. Examples of this include supporting passage of Pennsylvania Rule of Professional Conduct 8.4(g),\(^1\) the Federal Fair Pay Act,\(^2\) and ratification of the United Nations Convention on the Elimination of All Forms of Discrimination of Women (CEDAW).\(^3\)

The PBA also has a history of previously supporting the rights of LGBTQ+ people, including amending continuing legal education, diversity and inclusion requirements to include sexual orientation and gender identity; supporting same-sex marriage in Pennsylvania; and supporting an amendment to the Pennsylvania Human Relations Act to include sexual orientation and gender identity or expression as protected characteristics. Supporting passage of the Equality Act would allow the PBA to continue in this long legacy of justice.

Despite the colossal shift that the Supreme Court of the United States’ decision in *Bostock v. Clayton County* had on understanding how sexual orientation and gender identity fit under existing federal civil rights law, it expressly interpreted only one law: Title VII of the Civil Rights Act of 1964. As Section II of this Report outlines, a panoply of provisions under federal civil rights laws prohibit discrimination on the basis of sex and, while *Bostock* may be inferred to apply to those laws, disputes are almost certain to arise. Passage of the Equality Act will add much needed clarity to covered entities and individuals on the meaning of “sex” and severely limit unnecessary litigation over the breadth of *Bostock*. Absent the Equality Act, interpretations may differ, resulting in piecemeal enforcement of federal civil rights protections that would only lead to confusion,

\(^1\) This recommendation supported making discrimination or harassment on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status or professional misconduct. See http://www.pabar.org/public/committees/wom01/pubs/wip%20recom-final2016.pdf.

\(^2\) This recommendation supported federal legislation that would overturn the Supreme Court’s decision in *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007), and base Title VII’s 180-day notice requirement in pay disparity matters on the date of last paycheck rather than when the decision to discriminate was made. Such legislation would support all protected characteristics under Title VII, including race and sex. See http://www.pabar.org/public/committees/CIIV01/resolutions/Resolution%20in%20Support%20of the%20Equal%20Pay%20Act%2011_30_07.pdf.

\(^3\) This recommendation supported ratification of an international human rights treaty which mandated a legal framework that provides protection against discrimination against women. See http://www.pabar.org/public/committees/CIIV01/resolutions/Civil%20Equal%20Rights%20Cmte %20CEDAW%20Resolution-final.pdf.
intentional and unintentional harm, and continued occurrence of preventable discriminatory treatment.

Moreover, the Equality Act goes further than *Bostock*’s limits. In addition to codifying *Bostock*, the Act would add “sex (including sexual orientation and gender identity)” to a number of civil rights laws that did not previously prohibit sex discrimination; explicitly expand the enterprises deemed to be public accommodations; and explicitly prohibit denying access to restrooms, locker rooms, and dressing rooms on the basis of someone’s gender identity. Further, to resolve a question left unanswered in *Bostock*, the Equality Act would explicitly state that the Religious Freedom Restoration Act of 1993 may not be used as a defense to Title VII and other federal civil rights laws.\(^4\)

**IV. Support for the Equality Act Comports with the PBA’s Mission**

Support for the Equality Act furthers the following principles included in the PBA’s Mission:

- To propound the precepts of the rule of law;
- to advance the science and art of jurisprudence;
- to support and promote a diverse and inclusive system of justice;
- to support and promote the equal administration of justice for all and that no one on account of poverty be denied their legal rights;
- and to secure proper legislation in support of all these purposes.

Support for the Equality Act advances the PBA’s Mission in a number of important ways. First, the Act clarifies federal civil rights protections to explicitly define sex as including sexual orientation and gender identity. Such clarification promotes a diverse and inclusive system of justice by recognizing the innate connection between discrimination against LGBTQ+ people and discrimination based on rigid gender roles and expectations.

Second, the Equality Act promotes the equal administration of justice by ensuring the equal protection of laws prohibiting sex stereotyping or other forms of sex discrimination to discrimination against LGBTQ+ people.\(^5\)

Third, by passing the Equality Act, the volume of further litigation over enforcement of federal civil rights laws to sexual orientation and gender identity discrimination will be reduced. Courts and the legal profession will be less likely to become engaged in disputes that further alienate the LGBTQ+ community—thus supporting and promoting civility and professionalism in the practice of law.

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\(^4\) On February 22, 2022, the Supreme Court of the United States in *303 Creative LLC, et al. v. Aubrey Elenis, et al.* granted a petition for writ of certiorari on the issue of whether “applying a public-accommodation law to compel an artist to speak or stay silent violates the Free Speech Clause of the First Amendment.” While it is unclear whether or how the Equality Act would affect the Supreme Court’s analysis of that broad issue, its passage would mitigate any erosion of public accommodations protections by expanding its general provisions.

\(^5\) *See, e.g., Evans v. Georgia Regional Hospital*, 850 F.3d 1248 (11th Cir. 2017).
Fourth, supporting the Equality Act continues the PBA’s legacy of promoting justice and fairness to all, thus honoring the PBA’s legacy.

Finally, supporting the Equality Act will secure proper legislation in support of the aforementioned goals of the PBA.

The resolution also furthers the missions of the committees from whom this proposal originates, which also furthers the PBA’s mission. The Mission of the Civil and Equal Rights Committee states:

The Civil and Equal Rights Committee shall promote and defend civil rights and responsibilities, fair treatment and equal opportunity for all individuals and the avoidance and elimination of wrongful discrimination and unfair bias by (a) monitoring actual and proposed legislation, litigation, rules of conduct and procedures and other relevant developments; (b) educating the legal community and the public; and (c) making proposals and recommendations to advance and effect the goals of the committee.

The Mission of the LGBTQ+ Rights Committee states:

The LGBTQ+ Rights Committee shall study matters pertaining to the recognition and protection of the legal rights of the gay, lesbian, bisexual and transgender (LGBTQ+) community. The committee will monitor and make recommendations on issues and developments in the law impacting LGBTQ+ people in the public and the legal profession.

The Civil and Equal Rights Committee and LGBTQ+ Rights Committee submit this Recommendation to further their respective missions and the mission of the PBA.

Respectfully Submitted,

Martricia McLaughlin, Esq.
Thomas W. Ude, Jr., Esq.
Co-Chairs
LGBTQ+ Rights Committee

Deborah R. Gross, Esq.
Chair
Civil & Equal Rights Committee

Approved by the Board of Governors, May 11, 2022
Approved by the House of Delegates, May 13, 2022

March 15, 2022
AN ACT

To prohibit discrimination on the basis of sex, gender identity, and sexual orientation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Equality Act”.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) Discrimination can occur on the basis of the sex, sexual orientation, gender identity, pregnancy,
childbirth, or a related medical condition of an individual, as well as because of sex-based stereotypes. Each of these factors alone can serve as the basis for discrimination, and each is a form of sex discrimination.

(2) A single instance of discrimination may have more than one basis. For example, discrimination against a married same-sex couple could be based on the sex stereotype that marriage should only be between heterosexual couples, the sexual orientation of the two individuals in the couple, or both. In addition, some persons are subjected to discrimination based on a combination or the intersection of multiple protected characteristics. Discrimination against a pregnant lesbian could be based on her sex, her sexual orientation, her pregnancy, or on the basis of multiple factors.

(3) Lesbian, gay, bisexual, transgender, and queer (referred to as “LGBTQ”) people commonly experience discrimination in securing access to public accommodations—including restaurants, senior centers, stores, places of or establishments that provide entertainment, health care facilities, shelters, government offices, youth service providers including adoption and foster care providers, and transpor-
ation. Forms of discrimination include the exclusion and denial of entry, unequal or unfair treatment, harassment, and violence. This discrimination prevents the full participation of LGBTQ people in society and disrupts the free flow of commerce.

(4) Women also have faced discrimination in many establishments such as stores and restaurants, and places or establishments that provide other goods or services, such as entertainment or transportation, including sexual harassment, differential pricing for substantially similar products and services, and denial of services because they are pregnant or breastfeeding.

(5) Many employers already and continue to take proactive steps, beyond those required by some States and localities, to ensure they are fostering positive and respectful cultures for all employees. Many places of public accommodation also recognize the economic imperative to offer goods and services to as many consumers as possible.

(6) Regular and ongoing discrimination against LGBTQ people, as well as women, in accessing public accommodations contributes to negative social and economic outcomes, and in the case of public ac-
commodations operated by State and local governments, abridges individuals’ constitutional rights.

(7) The discredited practice known as “conversion therapy” is a form of discrimination that harms LGBTQ people by undermining individuals’ sense of self worth, increasing suicide ideation and substance abuse, exacerbating family conflict, and contributing to second-class status.

(8) Both LGBTQ people and women face widespread discrimination in employment and various services, including by entities that receive Federal financial assistance. Such discrimination—

(A) is particularly troubling and inappropriate for programs and services funded wholly or in part by the Federal Government;

(B) undermines national progress toward equal treatment regardless of sex, sexual orientation, or gender identity; and

(C) is inconsistent with the constitutional principle of equal protection under the Fourteenth Amendment to the Constitution of the United States.

(9) Federal courts have widely recognized that, in enacting the Civil Rights Act of 1964, Congress validly invoked its powers under the Fourteenth
Amendment to provide a full range of remedies in response to persistent, widespread, and pervasive discrimination by both private and government actors.

(10) Discrimination by State and local governments on the basis of sexual orientation or gender identity in employment, housing, and public accommodations, and in programs and activities receiving Federal financial assistance, violates the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. In many circumstances, such discrimination also violates other constitutional rights such as those of liberty and privacy under the due process clause of the Fourteenth Amendment.

(11) Individuals who are LGBTQ, or are perceived to be LGBTQ, have been subjected to a history and pattern of persistent, widespread, and pervasive discrimination on the bases of sexual orientation and gender identity by both private sector and Federal, State, and local government actors, including in employment, housing, and public accommodations, and in programs and activities receiving Federal financial assistance. This discrimination inflicts a range of tangible and intangible harms, sometimes
even including serious physical injury or death. An explicit and comprehensive national solution is needed to address this discrimination, including the full range of remedies available under the Civil Rights Act of 1964.

(12) Discrimination based on sexual orientation includes discrimination based on an individual’s actual or perceived romantic, emotional, physical, or sexual attraction to other persons, or lack thereof, on the basis of gender. LGBTQ people, including gender nonbinary people, also commonly experience discrimination because of sex-based stereotypes. Many people are subjected to discrimination because of others’ perceptions or beliefs regarding their sexual orientation. Even if these perceptions are incorrect, the identity imputed by others forms the basis of discrimination.

(13) Numerous provisions of Federal law expressly prohibit discrimination on the basis of sex, and Federal courts and agencies have correctly interpreted these prohibitions on sex discrimination to include discrimination based on sexual orientation, gender identity, and sex stereotypes. In particular, the Supreme Court of the United States correctly held in Bostock v. Clayton County, 140 S. Ct. 1731.
(2020) that the prohibition on employment discrimi-
nation because of sex under title VII of the Civil
Rights Act of 1964 inherently includes discrimina-
tion because of sexual orientation or transgender
status.

(14) This Act makes explicit that existing Fed-
eral statutes prohibiting sex discrimination in em-
ployment (including in access to benefits),
healthcare, housing, education, credit, and jury serv-
vice also prohibit sexual orientation and gender iden-
tity discrimination.

(15) LGBTQ people often face discrimination
when seeking to rent or purchase housing, as well as
in every other aspect of obtaining and maintaining
housing. LGBTQ people in same-sex relationships
are often discriminated against when two names as-
sociated with one gender appear on a housing appli-
cation, and transgender people often encounter dis-
crimination when credit checks or inquiries reveal a
former name.

(16) National surveys, including a study com-
mmissioned by the Department of Housing and Urban
Development, show that housing discrimination
against LGBTQ people is very prevalent. For in-
stance, when same-sex couples inquire about housing
that is available for rent, they are less likely to receive positive responses from landlords. A national matched-pair testing investigation found that nearly one-half of same-sex couples had encountered adverse, differential treatment when seeking elder housing. According to other studies, transgender people have half the homeownership rate of non-transgender people and about 1 in 5 transgender people experience homelessness. Another survey found that 82 percent of gender nonbinary people experiencing homelessness lacked access to shelter.

(17) As a result of the absence of explicit prohibitions against discrimination on the basis of sexual orientation and gender identity, credit applicants who are LGBTQ, or are perceived to be LGBTQ, have unequal opportunities to establish credit. LGBTQ people can experience being denied a mortgage, credit card, student loan, or many other types of credit simply because of their sexual orientation or gender identity.

(18) Numerous studies demonstrate that LGBTQ people, especially transgender people and women, are economically disadvantaged and at a higher risk for poverty compared with other groups of people. For example, the poverty rate for older
women in same-sex couples is twice that of older different-sex couples.

(19) The right to an impartial jury of one’s peers and the reciprocal right to jury service are fundamental to the free and democratic system of justice in the United States and are based in the Bill of Rights. There is, however, an unfortunate and long-documented history in the United States of attorneys discriminating against LGBTQ individuals, or those perceived to be LGBTQ, in jury selection. Failure to bar peremptory challenges based on the actual or perceived sexual orientation or gender identity of an individual not only erodes a fundamental right, duty, and obligation of being a citizen of the United States, but also unfairly creates a second class of citizenship for LGBTQ victims, witnesses, plaintiffs, and defendants.

(20) Numerous studies document the shortage of qualified and available homes for the approximately 424,000 youth in the child welfare system and the negative outcomes for the many youth who live in group care as opposed to a loving home or who age out of care without a permanent family placement. Although same-sex couples are 7 times more likely to foster or adopt than their different-
sex counterparts, many child-placing agencies refuse to serve same-sex couples and LGBTQ individuals. This has resulted in a reduction of the pool of qualified and available homes for youth in the child welfare system who need placement on a temporary or permanent basis. It also sends a negative message about LGBTQ people to children and youth in the child welfare system about who is, and who is not, considered fit to be a parent. While the priority should be on providing the supports necessary to keep children with their families, when removal is required, barring discrimination in foster care and adoption will increase the number of homes available to foster children waiting for foster and adoptive families.

(21) LGBTQ youth are overrepresented in the foster care system by at least a factor of two and report twice the rate of poor treatment while in care compared to their non-LGBTQ counterparts. LGBTQ youth in foster care have a higher average number of placements, higher likelihood of living in a group home, and higher rates of hospitalization for emotional reasons and of juvenile justice involvement than their non-LGBTQ peers because of the high level of bias and discrimination that they face and
the difficulty of finding affirming foster placements. Further, due to their physical distance from friends and family, traumatic experiences, and potentially unstable living situations, all youth involved with child welfare services are at risk for being targeted by traffickers seeking to exploit children. Barring discrimination in child welfare services will ensure improved treatment and outcomes for LGBTQ foster children.

(22) Courts consistently have found that the government has a compelling interest in preventing and remedying discrimination. For example, the Supreme Court of the United States found there to be a compelling government interest in eliminating sex discrimination in Board of Directors of Rotary International v. Rotary Club of Duarte, 481 U.S. 537, 549 (1987). Because discrimination based on sexual orientation or gender identity inherently is a form of sex discrimination, as held in Bostock v. Clayton County, 140 S. Ct. 1731 (2020), this Act furthers the compelling government interest in providing redress for the serious harms to mental and physical health, financial security and wellbeing, civic participation, freedom of movement and opportunity, personal dignity, and physical safety that re-
result from discrimination. Consistent with the role nondiscrimination laws play in protecting lives and livelihoods, alleviating suffering, and improving individual and public health, the Supreme Court of the United States has long recognized, under the decision in Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241 (1964), that these laws also benefit society as a whole by ending the “disruptive effect” discrimination has on travel and commerce, and by creating a level field for all participants in a given sector.

(23) As with all prohibitions on invidious discrimination, this Act furthers the government’s compelling interest in the least restrictive way because only by forbidding discrimination is it possible to avert or redress the harms described in this subsection.

(b) PURPOSE.—It is the purpose of this Act to expand as well as clarify, confirm and create greater consistency in the protections and remedies against discrimination on the basis of all covered characteristics and to provide guidance and notice to individuals, organizations, corporations, and agencies regarding their obligations under the law.
SEC. 3. PUBLIC ACCOMMODATIONS.

(a) Prohibition on Discrimination or Segregation in Public Accommodations.—Section 201 of the Civil Rights Act of 1964 (42 U.S.C. 2000a) is amended—

(1) in subsection (a), by inserting “sex (including sexual orientation and gender identity),” before “or national origin”; and

(2) in subsection (b)—

(A) in paragraph (3), by striking “stadium” and all that follows and inserting “stadium or other place of or establishment that provides exhibition, entertainment, recreation, exercise, amusement, public gathering, or public display;”;

(B) by redesignating paragraph (4) as paragraph (6); and

(C) by inserting after paragraph (3) the following:

“(4) any establishment that provides a good, service, or program, including a store, shopping center, online retailer or service provider, salon, bank, gas station, food bank, service or care center, shelter, travel agency, or funeral parlor, or establishment that provides health care, accounting, or legal services;
“(5) any train service, bus service, car service, taxi service, airline service, station, depot, or other place of or establishment that provides transportation service; and”.

(b) Prohibition on Discrimination or Segregation Under Law.—Section 202 of such Act (42 U.S.C. 2000a–1) is amended by inserting “sex (including sexual orientation and gender identity),” before “or national origin”.

(c) Rule of Construction.—Title II of such Act (42 U.S.C. 2000a et seq.) is amended by adding at the end the following:

“SEC. 208. RULE OF CONSTRUCTION.

“A reference in this title to an establishment—

“(1) shall be construed to include an individual whose operations affect commerce and who is a provider of a good, service, or program; and

“(2) shall not be construed to be limited to a physical facility or place.”.

SEC. 4. DESEGREGATION OF PUBLIC FACILITIES.

Section 301(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000b(a)) is amended by inserting “sex (including sexual orientation and gender identity),” before “or national origin”.
SEC. 5. DESEGREGATION OF PUBLIC EDUCATION.

(a) DEFINITIONS.—Section 401(b) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(b)) is amended by inserting “(including sexual orientation and gender identity),” before “or national origin”.

(b) CIVIL ACTIONS BY THE ATTORNEY GENERAL.—
Section 407 of such Act (42 U.S.C. 2000e–6) is amended, in subsection (a)(2), by inserting “(including sexual orientation and gender identity),” before “or national origin”.

(c) CLASSIFICATION AND ASSIGNMENT.—Section 410 of such Act (42 U.S.C. 2000e–9) is amended by inserting “(including sexual orientation and gender identity),” before “or national origin”.

SEC. 6. FEDERAL FUNDING.

Section 601 of the Civil Rights Act of 1964 (42 U.S.C. 2000d) is amended by inserting “sex (including sexual orientation and gender identity),” before “or national origin,”.

SEC. 7. EMPLOYMENT.

(a) RULES OF CONSTRUCTION.—Title VII of the Civil Rights Act of 1964 is amended by inserting after section 701 (42 U.S.C. 2000e) the following:

“SEC. 701A. RULES OF CONSTRUCTION.

“Section 1106 shall apply to this title except that for purposes of that application, a reference in that section
to an ‘unlawful practice’ shall be considered to be a reference to an ‘unlawful employment practice’.”.

(b) UNLAWFUL EMPLOYMENT PRACTICES.—Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2) is amended—

(1) in the section header, by striking “SEX,” and inserting “SEX (INCLUDING SEXUAL ORIENTATION AND GENDER IDENTITY),”;

(2) except in subsection (e), by striking “sex,” each place it appears and inserting “sex (including sexual orientation and gender identity),”;

(3) in subsection (e)(1), by striking “enterprise,” and inserting “enterprise, if, in a situation in which sex is a bona fide occupational qualification, individuals are recognized as qualified in accordance with their gender identity,”; and

(4) in subsection (h), by striking “sex” the second place it appears and inserting “sex (including sexual orientation and gender identity),”.

(c) OTHER UNLAWFUL EMPLOYMENT PRACTICES.—

Section 704(b) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–3(b)) is amended—

(1) by striking “sex,” the first place it appears and inserting “sex (including sexual orientation and gender identity),”; and
(2) by striking “employment.” and inserting “employment, if, in a situation in which sex is a bona fide occupational qualification, individuals are recognized as qualified in accordance with their gender identity.”.

(d) CLAIMS.—Section 706(g)(2)(A) of the Civil Rights Act of 1964 (2000e–5(g)(2)(A)) is amended by striking “sex,” and inserting “sex (including sexual orientation and gender identity),”.

(e) EMPLOYMENT BY FEDERAL GOVERNMENT.—Section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16) is amended—

(1) in subsection (a), by striking “sex,” and inserting “sex (including sexual orientation and gender identity),”; and

(2) in subsection (c), by striking “sex” and inserting “sex (including sexual orientation and gender identity),”.


(1) in section 301(b), by striking “sex,” and inserting “sex (including sexual orientation and gender identity),”;
(2) in section 302(a)(1), by striking “sex,” and inserting “sex (including sexual orientation and gender identity),”; and

(3) by adding at the end the following:

“SEC. 305. RULES OF CONSTRUCTION AND CLAIMS.

“Sections 1101(b), 1106, and 1107 of the Civil Rights Act of 1964 shall apply to this title except that for purposes of that application, a reference in that section 1106 to ‘race, color, religion, sex (including sexual orientation and gender identity), or national origin’ shall be considered to be a reference to ‘race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability’.”.

(g) CONGRESSIONAL ACCOUNTABILITY ACT OF 1995.—The Congressional Accountability Act of 1995 (2 U.S.C. 1301 et seq.) is amended—

(1) in section 201(a)(1) (2 U.S.C. 1311(a)(1)) by inserting “(including sexual orientation and gender identity),” before “or national origin,”; and

(2) by adding at the end of title II (42 U.S.C. 1311 et seq.) the following:

“SEC. 209. RULES OF CONSTRUCTION AND CLAIMS.

“Sections 1101(b), 1106, and 1107 of the Civil Rights Act of 1964 shall apply to section 201 (and remedial provisions of this Act related to section 201) except
that for purposes of that application, a reference in that
section 1106 to ‘race, color, religion, sex (including sexual
orientation and gender identity), or national origin’ shall
be considered to be a reference to ‘race, color, religion,
sex (including sexual orientation and gender identity), na-
tional origin, age, or disability’.”.

(h) CIVIL SERVICE REFORM ACT OF 1978.—Chapter
23 of title 5, United States Code, is amended—

(1) in section 2301(b)(2), by striking “sex,”
and inserting “sex (including sexual orientation and
gender identity),”;

(2) in section 2302—

(A) in subsection (b)(1)(A), by inserting
“(including sexual orientation and gender iden-
tity),” before “or national origin,”; and

(B) in subsection (d)(1), by inserting “(in-
cluding sexual orientation and gender iden-
tity),” before “or national origin;”; and

(3) by adding at the end the following:

“SEC. 2307. RULES OF CONSTRUCTION AND CLAIMS.

“Sections 1101(b), 1106, and 1107 of the Civil
Rights Act of 1964 shall apply to this chapter (and reme-
dial provisions of this title related to this chapter) except
that for purposes of that application, a reference in that
section 1106 to ‘race, color, religion, sex (including sexual
orientation and gender identity), or national origin’ shall be considered to be a reference to ‘race, color, religion, sex (including sexual orientation and gender identity), national origin, age, a handicapping condition, marital status, or political affiliation’.

SEC. 8. INTERVENTION.

Section 902 of the Civil Rights Act of 1964 (42 U.S.C. 2000h–2) is amended by inserting “(including sexual orientation and gender identity),” before “or national origin,.”

SEC. 9. MISCELLANEOUS.

Title XI of the Civil Rights Act of 1964 is amended—

(1) by redesignating sections 1101 through 1104 (42 U.S.C. 2000h et seq.) and sections 1105 and 1106 (42 U.S.C. 2000h–5, 2000h–6) as sections 1102 through 1105 and sections 1108 and 1109, respectively;

(2) by inserting after the title heading the following:

“SEC. 1101. DEFINITIONS AND RULES.

“(a) DEFINITIONS.—In titles II, III, IV, VI, VII, and IX (referred to individually in sections 1106 and 1107 as a ‘covered title’):

“(1) RACE; COLOR; RELIGION; SEX; SEXUAL ORIENTATION; GENDER IDENTITY; NATIONAL ORI-
GIN.—The term ‘race’, ‘color’, ‘religion’, ‘sex’ (including ‘sexual orientation’ and ‘gender identity’), or ‘national origin’, used with respect to an individual, includes—

“(A) the race, color, religion, sex (including sexual orientation and gender identity), or national origin, respectively, of another person with whom the individual is associated or has been associated; and

“(B) a perception or belief, even if inaccurate, concerning the race, color, religion, sex (including sexual orientation and gender identity), or national origin, respectively, of the individual.

“(2) GENDER IDENTITY.—The term ‘gender identity’ means the gender-related identity, appearance, mannerisms, or other gender-related characteristics of an individual, regardless of the individual’s designated sex at birth.

“(3) INCLUDING.—The term ‘including’ means including, but not limited to, consistent with the term’s standard meaning in Federal law.

“(4) SEX.—The term ‘sex’ includes—

“(A) a sex stereotype;
“(B) pregnancy, childbirth, or a related medical condition;

“(C) sexual orientation or gender identity;

and

“(D) sex characteristics, including intersex traits.

“(5) SEXUAL ORIENTATION.—The term ‘sexual orientation’ means homosexuality, heterosexuality, or bisexuality.

“(b) RULES.—In a covered title referred to in subsection (a)—

“(1) (with respect to sex) pregnancy, childbirth, or a related medical condition shall not receive less favorable treatment than other physical conditions; and

“(2) (with respect to gender identity) an individual shall not be denied access to a shared facility, including a restroom, a locker room, and a dressing room, that is in accordance with the individual’s gender identity.”; and

(3) by inserting after section 1105 the follow-
“SEC. 1106. RULES OF CONSTRUCTION.

“(a) **SEX.**—Nothing in section 1101 or the provisions of a covered title incorporating a term defined or a rule specified in that section shall be construed—

“(1) to limit the protection against an unlawful practice on the basis of pregnancy, childbirth, or a related medical condition provided by section 701(k); or

“(2) to limit the protection against an unlawful practice on the basis of sex available under any provision of Federal law other than that covered title, prohibiting a practice on the basis of sex.

“(b) **CLAIMS AND REMEDIES NOT PRECLUDED.**—Nothing in section 1101 or a covered title shall be construed to limit the claims or remedies available to any individual for an unlawful practice on the basis of race, color, religion, sex (including sexual orientation and gender identity), or national origin including claims brought pursuant to section 1979 or 1980 of the Revised Statutes (42 U.S.C. 1983, 1985) or any other law, including a Federal law amended by the Equality Act, regulation, or policy.

“(c) **NO NEGATIVE INFERENCE.**—Nothing in section 1101 or a covered title shall be construed to support any inference that any Federal law prohibiting a practice on the basis of sex does not prohibit discrimination on the basis of pregnancy, childbirth, or a related medical condi-
tion, sexual orientation, gender identity, or a sex stereotype.

“SEC. 1107. CLAIMS.

“The Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb et seq.) shall not provide a claim concerning, or a defense to a claim under, a covered title, or provide a basis for challenging the application or enforcement of a covered title.”.

SEC. 10. HOUSING.

(a) FAIR HOUSING ACT.—The Fair Housing Act (42 U.S.C. 3601 et seq.) is amended—

(1) in section 802 (42 U.S.C. 3602), by adding at the end the following:

“(p) ‘Gender identity’, ‘sex’, and ‘sexual orientation’ have the meanings given those terms in section 1101(a) of the Civil Rights Act of 1964.

“(q) ‘Race’, ‘color’, ‘religion’, ‘sex’ (including ‘sexual orientation’ and ‘gender identity’), ‘handicap’, ‘familial status’, or ‘national origin’, used with respect to an individual, includes—

“(1) the race, color, religion, sex (including sexual orientation and gender identity), handicap, familial status, or national origin, respectively, of another person with whom the individual is associated or has been associated; and
“(2) a perception or belief, even if inaccurate, concerning the race, color, religion, sex (including sexual orientation and gender identity), handicap, familial status, or national origin, respectively, of the individual.”;

(2) in section 804, by inserting “(including sexual orientation and gender identity),” after “sex,” each place that term appears;

(3) in section 805, by inserting “(including sexual orientation and gender identity),” after “sex,” each place that term appears;

(4) in section 806, by inserting “(including sexual orientation and gender identity),” after “sex,”;

(5) in section 808(e)(6), by inserting “(including sexual orientation and gender identity),” after “sex,”;

(6) by adding at the end the following:

“SEC. 821. RULES OF CONSTRUCTION.

“Sections 1101(b) and 1106 of the Civil Rights Act of 1964 shall apply to this title and section 901, except that for purposes of that application, a reference in that section 1101(b) or 1106 to a ‘covered title’ shall be considered a reference to ‘this title and section 901’.
“SEC. 822. CLAIMS.

“Section 1107 of the Civil Rights Act of 1964 shall apply to this title and section 901, except that for purposes of that application, a reference in that section 1107 to a ‘covered title’ shall be considered a reference to ‘this title and section 901’.”.

(b) PREVENTION OF INTIMIDATION IN FAIR HOUSING CASES.—Section 901 of the Civil Rights Act of 1968 (42 U.S.C. 3631) is amended by inserting “(including sexual orientation (as such term is defined in section 802 of this Act) and gender identity (as such term is defined in section 802 of this Act)),” after “sex,” each place that term appears.

SEC. 11. EQUAL CREDIT OPPORTUNITY.

(a) PROHIBITED DISCRIMINATION.—Section 701(a)(1) of the Equal Credit Opportunity Act (15 U.S.C. 1691(a)(1)) is amended by inserting “(including sexual orientation and gender identity),” after “sex”.

(b) DEFINITIONS.—Section 702 of the Equal Credit Opportunity Act (15 U.S.C. 1691a) is amended—

(1) by redesignating subsections (f) and (g) as subsections (h) and (i), respectively;

(2) by inserting after subsection (e) the following:
“(f) The terms ‘gender identity’, ‘sex’, and ‘sexual orientation’ have the meanings given those terms in section 1101(a) of the Civil Rights Act of 1964.

“(g) The term ‘race’, ‘color’, ‘religion’, ‘national origin’, ‘sex’ (including ‘sexual orientation’ and ‘gender identity’), ‘marital status’, or ‘age’, used with respect to an individual, includes—

“(1) the race, color, religion, national origin, sex (including sexual orientation and gender identity), marital status, or age, respectively, of another person with whom the individual is associated or has been associated; and

“(2) a perception or belief, even if inaccurate, concerning the race, color, religion, national origin, sex (including sexual orientation and gender identity), marital status, or age, respectively, of the individual.”; and

(3) by adding at the end the following:

“(j) Sections 1101(b) and 1106 of the Civil Rights Act of 1964 shall apply to this title, except that for purposes of that application—

“(1) a reference in those sections to a ‘covered title’ shall be considered a reference to ‘this title’; and
“(2) paragraph (1) of such section 1101(b) shall apply with respect to all aspects of a credit transaction.”.

(c) Relation to State Laws.—Section 705(a) of the Equal Credit Opportunity Act (15 U.S.C. 1691d(a)) is amended by inserting “(including sexual orientation and gender identity),” after “sex”.

(d) Civil Liability.—Section 706 of the Equal Credit Opportunity Act (15 U.S.C. 1691e) is amended by adding at the end the following:

“(l) Section 1107 of the Civil Rights Act of 1964 shall apply to this title, except that for purposes of that application, a reference in that section to a ‘covered title’ shall be considered a reference to ‘this title’.”.

SEC. 12. JURIES.

(a) In General.—Chapter 121 of title 28, United States Code, is amended—

(1) in section 1862, by inserting “(including sexual orientation and gender identity),” after “sex,”;

(2) in section 1867(e), in the second sentence, by inserting “(including sexual orientation and gender identity),” after “sex,”;

(3) in section 1869—
(A) in subsection (j), by striking “and” at the end;

(B) in subsection (k), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

“(l) ‘gender identity’, ‘sex’, and ‘sexual orientation’ have the meanings given such terms under section 1101(a) of the Civil Rights Act of 1964; and

“(m) ‘race’, ‘color’, ‘religion’, ‘sex’ (including ‘sexual orientation’ and ‘gender identity’), ‘economic status’, or ‘national origin’, used with respect to an individual, includes—

“(1) the race, color, religion, sex (including sexual orientation and gender identity), economic status, or national origin, respectively, of another person with whom the individual is associated or has been associated; and

“(2) a perception or belief, even if inaccurate, concerning the race, color, religion, sex (including sexual orientation and gender identity), economic status, or national origin, respectively, of the individual.”; and

(4) by adding at the end the following:
§ 1879. Rules of construction and claims

"Sections 1101(b), 1106, and 1107 of the Civil Rights Act of 1964 shall apply to this chapter, except that for purposes of that application, a reference in those sections to a ‘covered title’ shall be considered a reference to ‘this chapter’.”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—
The table of sections for chapter 121 of title 28, United States Code, is amended by adding at the end the following:

"1879. Rules of construction and claims.”.

Passed the House of Representatives February 25, 2021.

Attest: CHERYL L. JOHNSON,

Clerk.
AN ACT

To prohibit discrimination on the basis of sex, gender identity, and sexual orientation, and for other purposes.

H. R. 5

117TH CONGRESS
117TH SESSION
MARCH 2, 2021

Read the first time
MARCH 2, 2021

Read the second time and placed on the calendar
MARCH 2, 2021

VerDate Sep 11 2014 23:37 Mar 02, 2021 Jkt 019200 PO 00000 Frm 00032 Fmt 6651 Sfmt 6651 E:\BILLS\H5.PCS H5kjohnson on DSK79L0C42PROD with BILLS
S. 393

To prohibit discrimination on the basis of sex, gender identity, and sexual orientation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

February 23, 2021

Mr. Merkley (for himself, Ms. Baldwin, Mr. Booker, Mr. Bennet, Mr. Blumenthal, Mr. Brown, Ms. Cantwell, Mr. Cardin, Mr. Carper, Mr. Casey, Mr. Coons, Ms. Cortez Masto, Ms. Duckworth, Mr. Durbin, Mrs. Feinstein, Mrs. Gillibrand, Ms. Hassan, Mr. Heinrich, Mr. Hickenlooper, Ms. Hirono, Mr. Kaine, Mr. Kelly, Mr. King, Ms. Klobuchar, Mr. Leahy, Mr. Luján, Mr. Markey, Mr. Menendez, Mr. Murphy, Mrs. Murray, Mr. Ossoff, Mr. Padilla, Mr. Peters, Mr. Reed, Ms. Rosen, Mr. Sanders, Mr. Schatz, Mr. Schumer, Mrs. Shaheen, Ms. Sinema, Ms. Smith, Ms. Stabenow, Mr. Tester, Mr. Van Hollen, Mr. Warner, Mr. Warnock, Ms. Warren, Mr. Whitehouse, and Mr. Wyden) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To prohibit discrimination on the basis of sex, gender identity, and sexual orientation, and for other purposes.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Equality Act”.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) Discrimination can occur on the basis of the sex, sexual orientation, gender identity, pregnancy, childbirth, or a related medical condition of an individual, as well as because of sex-based stereotypes. Each of these factors alone can serve as the basis for discrimination, and each is a form of sex discrimination.

(2) A single instance of discrimination may have more than one basis. For example, discrimination against a married same-sex couple could be based on the sex stereotype that marriage should only be between heterosexual couples, the sexual orientation of the two individuals in the couple, or both. In addition, some persons are subjected to discrimination based on a combination or the intersection of multiple protected characteristics. Discrimination against a pregnant lesbian could be based on her sex, her sexual orientation, her pregnancy, or on the basis of multiple factors.

(3) Lesbian, gay, bisexual, transgender, and queer (referred to as “LGBTQ”) people commonly experience discrimination in securing access to public accommodations—including restaurants, senior centers, stores, places of or establishments that pro-
vide entertainment, health care facilities, shelters, government offices, youth service providers including adoption and foster care providers, and transportation. Forms of discrimination include the exclusion and denial of entry, unequal or unfair treatment, harassment, and violence. This discrimination prevents the full participation of LGBTQ people in society and disrupts the free flow of commerce.

(4) Women also have faced discrimination in many establishments such as stores and restaurants, and places or establishments that provide other goods or services, such as entertainment or transportation, including sexual harassment, differential pricing for substantially similar products and services, and denial of services because they are pregnant or breastfeeding.

(5) Many employers already and continue to take proactive steps, beyond those required by some States and localities, to ensure they are fostering positive and respectful cultures for all employees. Many places of public accommodation also recognize the economic imperative to offer goods and services to as many consumers as possible.

(6) Regular and ongoing discrimination against LGBTQ people, as well as women, in accessing pub-
lic accommodations contributes to negative social and economic outcomes, and in the case of public accommodations operated by State and local governments, abridges individuals’ constitutional rights.

(7) The discredited practice known as “conversion therapy” is a form of discrimination that harms LGBTQ people by undermining individuals’ sense of self worth, increasing suicide ideation and substance abuse, exacerbating family conflict, and contributing to second-class status.

(8) Both LGBTQ people and women face widespread discrimination in employment and various services, including by entities that receive Federal financial assistance. Such discrimination—

(A) is particularly troubling and inappropriate for programs and services funded wholly or in part by the Federal Government;

(B) undermines national progress toward equal treatment regardless of sex, sexual orientation, or gender identity; and

(C) is inconsistent with the constitutional principle of equal protection under the Fourteenth Amendment to the Constitution of the United States.
(9) Federal courts have widely recognized that, in enacting the Civil Rights Act of 1964, Congress validly invoked its powers under the Fourteenth Amendment to provide a full range of remedies in response to persistent, widespread, and pervasive discrimination by both private and government actors.

(10) Discrimination by State and local governments on the basis of sexual orientation or gender identity in employment, housing, and public accommodations, and in programs and activities receiving Federal financial assistance, violates the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. In many circumstances, such discrimination also violates other constitutional rights such as those of liberty and privacy under the due process clause of the Fourteenth Amendment.

(11) Individuals who are LGBTQ, or are perceived to be LGBTQ, have been subjected to a history and pattern of persistent, widespread, and pervasive discrimination on the bases of sexual orientation and gender identity by both private sector and Federal, State, and local government actors, including in employment, housing, and public accommoda-
tions, and in programs and activities receiving Fed-
eral financial assistance. This discrimination inflicts
a range of tangible and intangible harms, sometimes
even including serious physical injury or death. An
explicit and comprehensive national solution is need-
ed to address this discrimination, including the full
range of remedies available under the Civil Rights
Act of 1964.

(12) Discrimination based on sexual orientation
includes discrimination based on an individual's ac-
tual or perceived romantic, emotional, physical, or
sexual attraction to other persons, or lack thereof,
on the basis of gender. LGBTQ people, including
gender nonbinary people, also commonly experience
discrimination because of sex-based stereotypes.
Many people are subjected to discrimination because
of others’ perceptions or beliefs regarding their sex-
ual orientation. Even if these perceptions are incor-
rect, the identity imputed by others forms the basis
of discrimination.

(13) Numerous provisions of Federal law ex-
pressly prohibit discrimination on the basis of sex,
and Federal courts and agencies have correctly in-
terpreted these prohibitions on sex discrimination to
include discrimination based on sexual orientation,
gender identity, and sex stereotypes. In particular, the Supreme Court of the United States correctly held in Bostock v. Clayton County, 140 S. Ct. 1731 (2020) that the prohibition on employment discrimination because of sex under title VII of the Civil Rights Act of 1964 inherently includes discrimination because of sexual orientation or transgender status.

(14) This Act makes explicit that existing Federal statutes prohibiting sex discrimination in employment (including in access to benefits), healthcare, housing, education, credit, and jury service also prohibit sexual orientation and gender identity discrimination.

(15) LGBTQ people often face discrimination when seeking to rent or purchase housing, as well as in every other aspect of obtaining and maintaining housing. LGBTQ people in same-sex relationships are often discriminated against when two names associated with one gender appear on a housing application, and transgender people often encounter discrimination when credit checks or inquiries reveal a former name.

(16) National surveys, including a study commissioned by the Department of Housing and Urban
Development, show that housing discrimination against LGBTQ people is very prevalent. For instance, when same-sex couples inquire about housing that is available for rent, they are less likely to receive positive responses from landlords. A national matched-pair testing investigation found that nearly one-half of same-sex couples had encountered adverse, differential treatment when seeking elder housing. According to other studies, transgender people have half the homeownership rate of nontransgender people and about 1 in 5 transgender people experience homelessness. Another survey found that 82 percent of gender nonbinary people experiencing homelessness lacked access to shelter.

(17) As a result of the absence of explicit prohibitions against discrimination on the basis of sexual orientation and gender identity, credit applicants who are LGBTQ, or are perceived to be LGBTQ, have unequal opportunities to establish credit. LGBTQ people can experience being denied a mortgage, credit card, student loan, or many other types of credit simply because of their sexual orientation or gender identity.

(18) Numerous studies demonstrate that LGBTQ people, especially transgender people and
women, are economically disadvantaged and at a higher risk for poverty compared with other groups of people. For example, the poverty rate for older women in same-sex couples is twice that of older different-sex couples.

(19) The right to an impartial jury of one’s peers and the reciprocal right to jury service are fundamental to the free and democratic system of justice in the United States and are based in the Bill of Rights. There is, however, an unfortunate and long-documented history in the United States of attorneys discriminating against LGBTQ individuals, or those perceived to be LGBTQ, in jury selection. Failure to bar peremptory challenges based on the actual or perceived sexual orientation or gender identity of an individual not only erodes a fundamental right, duty, and obligation of being a citizen of the United States, but also unfairly creates a second class of citizenship for LGBTQ victims, witnesses, plaintiffs, and defendants.

(20) Numerous studies document the shortage of qualified and available homes for the approximately 424,000 youth in the child welfare system and the negative outcomes for the many youth who live in group care as opposed to a loving home or
who age out of care without a permanent family placement. Although same-sex couples are 7 times more likely to foster or adopt than their different-sex counterparts, many child-placing agencies refuse to serve same-sex couples and LGBTQ individuals. This has resulted in a reduction of the pool of qualified and available homes for youth in the child welfare system who need placement on a temporary or permanent basis. It also sends a negative message about LGBTQ people to children and youth in the child welfare system about who is, and who is not, considered fit to be a parent. While the priority should be on providing the supports necessary to keep children with their families, when removal is required, barring discrimination in foster care and adoption will increase the number of homes available to foster children waiting for foster and adoptive families.

(21) LGBTQ youth are overrepresented in the foster care system by at least a factor of two and report twice the rate of poor treatment while in care compared to their non-LGBTQ counterparts. LGBTQ youth in foster care have a higher average number of placements, higher likelihood of living in a group home, and higher rates of hospitalization for
emotional reasons and of juvenile justice involvement than their non-LGBTQ peers because of the high level of bias and discrimination that they face and the difficulty of finding affirming foster placements. Further, due to their physical distance from friends and family, traumatic experiences, and potentially unstable living situations, all youth involved with child welfare services are at risk for being targeted by traffickers seeking to exploit children. Barring discrimination in child welfare services will ensure improved treatment and outcomes for LGBTQ foster children.

(22) Courts consistently have found that the government has a compelling interest in preventing and remedying discrimination. For example, the Supreme Court of the United States found there to be a compelling government interest in eliminating sex discrimination in Board of Directors of Rotary International v. Rotary Club of Duarte, 481 U.S. 537, 549 (1987). Because discrimination based on sexual orientation or gender identity inherently is a form of sex discrimination, as held in Bostock v. Clayton County, 140 S. Ct. 1731 (2020), this Act furthers the compelling government interest in providing redress for the serious harms to mental and
physical health, financial security and wellbeing,
civic participation, freedom of movement and oppor-
tunity, personal dignity, and physical safety that re-
sult from discrimination. Consistent with the role
nondiscrimination laws play in protecting lives and
livelihoods, alleviating suffering, and improving indi-
vidual and public health, the Supreme Court of the
United States has long recognized, under the deci-
sion in Heart of Atlanta Motel, Inc. v. United
States, 379 U.S. 241 (1964), that these laws also
benefit society as a whole by ending the “disruptive
effect” discrimination has on travel and commerce,
and by creating a level field for all participants in
a given sector.

(23) As with all prohibitions on invidious dis-
crimination, this Act furthers the government’s com-
pelling interest in the least restrictive way because
only by forbidding discrimination is it possible to
avert or redress the harms described in this sub-
section.

(b) PURPOSE.—It is the purpose of this Act to ex-
and as well as clarify, confirm and create greater consist-
ency in the protections and remedies against discrimina-
tion on the basis of all covered characteristics and to pro-
vide guidance and notice to individuals, organizations, cor-
porations, and agencies regarding their obligations under the law.

SEC. 3. PUBLIC ACCOMMODATIONS.

(a) Prohibition on Discrimination or Segregation in Public Accommodations.—Section 201 of the Civil Rights Act of 1964 (42 U.S.C. 2000a) is amended—

(1) in subsection (a), by inserting “sex (including sexual orientation and gender identity),” before “or national origin”; and

(2) in subsection (b)—

(A) in paragraph (3), by striking “stadium” and all that follows and inserting “stadium or other place of or establishment that provides exhibition, entertainment, recreation, exercise, amusement, public gathering, or public display;”;

(B) by redesignating paragraph (4) as paragraph (6); and

(C) by inserting after paragraph (3) the following:

“(4) any establishment that provides a good, service, or program, including a store, shopping center, online retailer or service provider, salon, bank, gas station, food bank, service or care center, shelter, travel agency, or funeral parlor, or establish-
ent that provides health care, accounting, or legal services;

“(5) any train service, bus service, car service, taxi service, airline service, station, depot, or other place of or establishment that provides transportation service; and”.

(b) Prohibition on Discrimination or Segregation Under Law.—Section 202 of such Act (42 U.S.C. 2000a–1) is amended by inserting “sex (including sexual orientation and gender identity),” before “or national origin”.

(c) Rule of Construction.—Title II of such Act (42 U.S.C. 2000a et seq.) is amended by adding at the end the following:

“SEC. 208. RULE OF CONSTRUCTION.

“A reference in this title to an establishment—

“(1) shall be construed to include an individual whose operations affect commerce and who is a provider of a good, service, or program; and

“(2) shall not be construed to be limited to a physical facility or place.”.

SEC. 4. DESEGREGATION OF PUBLIC FACILITIES.

Section 301(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000b(a)) is amended by inserting “sex (including
sexual orientation and gender identity),” before “or na-
tional origin”.

SEC. 5. DESEGREGATION OF PUBLIC EDUCATION.

(a) DEFINITIONS.—Section 401(b) of the Civil Rights Act of 1964 (42 U.S.C. 2000c(b)) is amended by inserting “(including sexual orientation and gender identity),” before “or national origin”.

(b) CIVIL ACTIONS BY THE ATTORNEY GENERAL.—Section 407 of such Act (42 U.S.C. 2000c–6) is amended, in subsection (a)(2), by inserting “(including sexual orient-ation and gender identity),” before “or national ori-gin”.

(c) CLASSIFICATION AND ASSIGNMENT.—Section 410 of such Act (42 U.S.C. 2000c–9) is amended by inserting “(including sexual orientation and gender identity),” before “or national origin”.

SEC. 6. FEDERAL FUNDING.

Section 601 of the Civil Rights Act of 1964 (42 U.S.C. 2000d) is amended by inserting “sex (including sexual orientation and gender identity),” before “or na-tional origin,”.

SEC. 7. EMPLOYMENT.

(a) RULES OF CONSTRUCTION.—Title VII of the Civil Rights Act of 1964 is amended by inserting after section 701 (42 U.S.C. 2000e) the following:
“SEC. 701A. RULES OF CONSTRUCTION.

“Section 1106 shall apply to this title except that for purposes of that application, a reference in that section to an ‘unlawful practice’ shall be considered to be a reference to an ‘unlawful employment practice’.”.

(b) UNLAWFUL EMPLOYMENT PRACTICES.—Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2) is amended—

(1) in the section header, by striking “SEX,” and inserting “SEX (INCLUDING SEXUAL ORIENTATION AND GENDER IDENTITY),”;

(2) except in subsection (e), by striking “sex,” each place it appears and inserting “sex (including sexual orientation and gender identity),”;

(3) in subsection (e)(1), by striking “enterprise,” and inserting “enterprise, if, in a situation in which sex is a bona fide occupational qualification, individuals are recognized as qualified in accordance with their gender identity,”; and

(4) in subsection (h), by striking “sex” the second place it appears and inserting “sex (including sexual orientation and gender identity),”.

(c) OTHER UNLAWFUL EMPLOYMENT PRACTICES.—

Section 704(b) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–3(b)) is amended—
(1) by striking “sex,” the first place it appears and inserting “sex (including sexual orientation and gender identity),”;

(2) by striking “employment.” and inserting “employment, if, in a situation in which sex is a bona fide occupational qualification, individuals are recognized as qualified in accordance with their gender identity.”.

(d) CLAIMS.—Section 706(g)(2)(A) of the Civil Rights Act of 1964 (2000e–5(g)(2)(A)) is amended by striking “sex,” and inserting “sex (including sexual orientation and gender identity),”.

(e) EMPLOYMENT BY FEDERAL GOVERNMENT.—Section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16) is amended—

(1) in subsection (a), by striking “sex,” and inserting “sex (including sexual orientation and gender identity),”;

(2) in subsection (c), by striking “sex” and inserting “sex (including sexual orientation and gender identity),”.

(1) in section 301(b), by striking “sex,” and inserting “sex (including sexual orientation and gender identity),”; 

(2) in section 302(a)(1), by striking “sex,” and inserting “sex (including sexual orientation and gender identity),”; and 

(3) by adding at the end the following:

“SEC. 305. RULES OF CONSTRUCTION AND CLAIMS.

“Sections 1101(b), 1106, and 1107 of the Civil Rights Act of 1964 shall apply to this title except that for purposes of that application, a reference in that section 1106 to ‘race, color, religion, sex (including sexual orientation and gender identity), or national origin’ shall be considered to be a reference to ‘race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.’”.

(g) CONGRESSIONAL ACCOUNTABILITY ACT OF 1995.—The Congressional Accountability Act of 1995 (2 U.S.C. 1301 et seq.) is amended—

(1) in section 201(a)(1) (2 U.S.C. 1311(a)(1)) by inserting “(including sexual orientation and gender identity),” before “or national origin,”; and 

(2) by adding at the end of title II (42 U.S.C. 1311 et seq.) the following:
“SEC. 209. RULES OF CONSTRUCTION AND CLAIMS.

“Sections 1101(b), 1106, and 1107 of the Civil Rights Act of 1964 shall apply to section 201 (and remedial provisions of this Act related to section 201) except that for purposes of that application, a reference in that section 1106 to ‘race, color, religion, sex (including sexual orientation and gender identity), or national origin’ shall be considered to be a reference to ‘race, color, religion, sex (including sexual orientation and gender identity), national origin, age, or disability’.”.

(h) CIVIL SERVICE REFORM ACT OF 1978.—Chapter 23 of title 5, United States Code, is amended—

(1) in section 2301(b)(2), by striking “sex,” and inserting “sex (including sexual orientation and gender identity),”;

(2) in section 2302—

(A) in subsection (b)(1)(A), by inserting “(including sexual orientation and gender identity),” before “or national origin,”; and

(B) in subsection (d)(1), by inserting “(including sexual orientation and gender identity),” before “or national origin;”;

(3) by adding at the end the following:

“SEC. 2307. RULES OF CONSTRUCTION AND CLAIMS.

“Sections 1101(b), 1106, and 1107 of the Civil Rights Act of 1964 shall apply to this chapter (and reme-
dial provisions of this title related to this chapter) except
that for purposes of that application, a reference in that
section 1106 to ‘race, color, religion, sex (including sexual
orientation and gender identity), or national origin’ shall
be considered to be a reference to ‘race, color, religion,
sex (including sexual orientation and gender identity), na-
tional origin, age, a handicapping condition, marital sta-
tus, or political affiliation’.”.

SEC. 8. INTERVENTION.

Section 902 of the Civil Rights Act of 1964 (42
U.S.C. 2000h–2) is amended by inserting “(including sex-
ual orientation and gender identity),” before “or national
origin,.”.

SEC. 9. MISCELLANEOUS.

Title XI of the Civil Rights Act of 1964 is amended—

(1) by redesignating sections 1101 through
1104 (42 U.S.C. 2000h et seq.) and sections 1105
and 1106 (42 U.S.C. 2000h–5, 2000h–6) as sections
1102 through 1105 and sections 1108 and 1109, re-
spectively;

(2) by inserting after the title heading the fol-
lowing:
“SEC. 1101. DEFINITIONS AND RULES.

“(a) DEFINITIONS.—In titles II, III, IV, VI, VII, and IX (referred to individually in sections 1106 and 1107 as a ‘covered title’):

“(1) RACE; COLOR; RELIGION; SEX; SEXUAL ORIENTATION; GENDER IDENTITY; NATIONAL ORIGIN.—The term ‘race’, ‘color’, ‘religion’, ‘sex’ (including ‘sexual orientation’ and ‘gender identity’), or ‘national origin’, used with respect to an individual, includes—

“(A) the race, color, religion, sex (including sexual orientation and gender identity), or national origin, respectively, of another person with whom the individual is associated or has been associated; and

“(B) a perception or belief, even if inaccurate, concerning the race, color, religion, sex (including sexual orientation and gender identity), or national origin, respectively, of the individual.

“(2) GENDER IDENTITY.—The term ‘gender identity’ means the gender-related identity, appearance, mannerisms, or other gender-related characteristics of an individual, regardless of the individual’s designated sex at birth.
“(3) INCLUDING.—The term ‘including’ means including, but not limited to, consistent with the term’s standard meaning in Federal law.

“(4) SEX.—The term ‘sex’ includes—

“(A) a sex stereotype;

“(B) pregnancy, childbirth, or a related medical condition;

“(C) sexual orientation or gender identity; and

“(D) sex characteristics, including intersex traits.

“(5) SEXUAL ORIENTATION.—The term ‘sexual orientation’ means homosexuality, heterosexuality, or bisexuality.

“(b) RULES.—In a covered title referred to in subsection (a)—

“(1) (with respect to sex) pregnancy, childbirth, or a related medical condition shall not receive less favorable treatment than other physical conditions; and

“(2) (with respect to gender identity) an individual shall not be denied access to a shared facility, including a restroom, a locker room, and a dressing room, that is in accordance with the individual’s gender identity.”; and
by inserting after section 1105 the following:

"SEC. 1106. RULES OF CONSTRUCTION.

"(a) SEX.—Nothing in section 1101 or the provisions of a covered title incorporating a term defined or a rule specified in that section shall be construed—

"(1) to limit the protection against an unlawful practice on the basis of pregnancy, childbirth, or a related medical condition provided by section 701(k); or

"(2) to limit the protection against an unlawful practice on the basis of sex available under any provision of Federal law other than that covered title, prohibiting a practice on the basis of sex.

"(b) CLAIMS AND REMEDIES NOT PRECLUDED.—Nothing in section 1101 or a covered title shall be construed to limit the claims or remedies available to any individual for an unlawful practice on the basis of race, color, religion, sex (including sexual orientation and gender identity), or national origin including claims brought pursuant to section 1979 or 1980 of the Revised Statutes (42 U.S.C. 1983, 1985) or any other law, including a Federal law amended by the Equality Act, regulation, or policy.

"(c) NO NEGATIVE INFERENCE.—Nothing in section 1101 or a covered title shall be construed to support any
inference that any Federal law prohibiting a practice on the basis of sex does not prohibit discrimination on the basis of pregnancy, childbirth, or a related medical condition, sexual orientation, gender identity, or a sex stereotype.

SEC. 1107. CLAIMS.

The Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb et seq.) shall not provide a claim concerning, or a defense to a claim under, a covered title, or provide a basis for challenging the application or enforcement of a covered title.”.

SEC. 10. HOUSING.

(a) FAIR HOUSING ACT.—The Fair Housing Act (42 U.S.C. 3601 et seq.) is amended—

(1) in section 802 (42 U.S.C. 3602), by adding at the end the following:

“(p) ‘Gender identity’, ‘sex’, and ‘sexual orientation’ have the meanings given those terms in section 1101(a) of the Civil Rights Act of 1964.

“(q) ‘Race’, ‘color’, ‘religion’, ‘sex’ (including ‘sexual orientation’ and ‘gender identity’), ‘handicap’, ‘familial status’, or ‘national origin’, used with respect to an individual, includes—

“(1) the race, color, religion, sex (including sexual orientation and gender identity), handicap, fa-
milial status, or national origin, respectively, of another person with whom the individual is associated or has been associated; and

“(2) a perception or belief, even if inaccurate, concerning the race, color, religion, sex (including sexual orientation and gender identity), handicap, familial status, or national origin, respectively, of the individual.”;

(2) in section 804, by inserting “(including sexual orientation and gender identity),” after “sex,” each place that term appears;

(3) in section 805, by inserting “(including sexual orientation and gender identity),” after “sex,” each place that term appears;

(4) in section 806, by inserting “(including sexual orientation and gender identity),” after “sex,”;

(5) in section 808(e)(6), by inserting “(including sexual orientation and gender identity),” after “sex,”; and

(6) by adding at the end the following:

“SEC. 821. RULES OF CONSTRUCTION.

“Sections 1101(b) and 1106 of the Civil Rights Act of 1964 shall apply to this title and section 901, except that for purposes of that application, a reference in that

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section 1101(b) or 1106 to a ‘covered title’ shall be considered a reference to ‘this title and section 901’.

“SEC. 822. CLAIMS.

“Section 1107 of the Civil Rights Act of 1964 shall apply to this title and section 901, except that for purposes of that application, a reference in that section 1107 to a ‘covered title’ shall be considered a reference to ‘this title and section 901’.”

(b) PREVENTION OF INTIMIDATION IN FAIR HOUSING CASES.—Section 901 of the Civil Rights Act of 1968 (42 U.S.C. 3631) is amended by inserting “(including sexual orientation (as such term is defined in section 802 of this Act) and gender identity (as such term is defined in section 802 of this Act)),” after “sex,” each place that term appears.

SEC. 11. EQUAL CREDIT OPPORTUNITY.

(a) PROHIBITED DISCRIMINATION.—Section 701(a)(1) of the Equal Credit Opportunity Act (15 U.S.C. 1691(a)(1)) is amended by inserting “(including sexual orientation and gender identity),” after “sex”.

(b) DEFINITIONS.—Section 702 of the Equal Credit Opportunity Act (15 U.S.C. 1691a) is amended—

(1) by redesignating subsections (f) and (g) as subsections (h) and (i), respectively;
(2) by inserting after subsection (e) the following:

“(f) The terms ‘gender identity’, ‘sex’, and ‘sexual orientation’ have the meanings given those terms in section 1101(a) of the Civil Rights Act of 1964.

“(g) The term ‘race’, ‘color’, ‘religion’, ‘national origin’, ‘sex’ (including ‘sexual orientation’ and ‘gender identity’), ‘marital status’, or ‘age’, used with respect to an individual, includes—

“(1) the race, color, religion, national origin, sex (including sexual orientation and gender identity), marital status, or age, respectively, of another person with whom the individual is associated or has been associated; and

“(2) a perception or belief, even if inaccurate, concerning the race, color, religion, national origin, sex (including sexual orientation and gender identity), marital status, or age, respectively, of the individual.”; and

(3) by adding at the end the following:

“(j) Sections 1101(b) and 1106 of the Civil Rights Act of 1964 shall apply to this title, except that for purposes of that application—
“(1) a reference in those sections to a ‘covered title’ shall be considered a reference to ‘this title’; and

“(2) paragraph (1) of such section 1101(b) shall apply with respect to all aspects of a credit transaction.”.

(e) RELATION TO STATE LAWS.—Section 705(a) of the Equal Credit Opportunity Act (15 U.S.C. 1691d(a)) is amended by inserting “(including sexual orientation and gender identity),” after “sex”.

(d) CIVIL LIABILITY.—Section 706 of the Equal Credit Opportunity Act (15 U.S.C. 1691e) is amended by adding at the end the following:

“(l) Section 1107 of the Civil Rights Act of 1964 shall apply to this title, except that for purposes of that application, a reference in that section to a ‘covered title’ shall be considered a reference to ‘this title’.”.

SEC. 12. JURIES.

(a) IN GENERAL.—Chapter 121 of title 28, United States Code, is amended—

(1) in section 1862, by inserting “(including sexual orientation and gender identity),” after “sex,”;
(2) in section 1867(e), in the second sentence, by inserting "(including sexual orientation and gender identity)," after "sex,;"

(3) in section 1869—

(A) in subsection (j), by striking "and" at the end;

(B) in subsection (k), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

"(l) 'gender identity', 'sex', and 'sexual orientation' have the meanings given such terms under section 1101(a) of the Civil Rights Act of 1964; and

“(m) 'race', 'color', 'religion', 'sex' (including 'sexual orientation' and 'gender identity'), 'economic status', or 'national origin', used with respect to an individual, includes—

“(1) the race, color, religion, sex (including sexual orientation and gender identity), economic status, or national origin, respectively, of another person with whom the individual is associated or has been associated; and

“(2) a perception or belief, even if inaccurate, concerning the race, color, religion, sex (including sexual orientation and gender identity), economic
status, or national origin, respectively, of the indi-
vidual.”; and

(4) by adding at the end the following:

“§ 1879. Rules of construction and claims

“Sections 1101(b), 1106, and 1107 of the Civil
Rights Act of 1964 shall apply to this chapter, except that
for purposes of that application, a reference in those sec-
tions to a ‘covered title’ shall be considered a reference
to ‘this chapter’.”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—
The table of sections for chapter 121 of title 28, United
States Code, is amended by adding at the end the fol-
lowing:

“1879. Rules of construction and claims.”.