

114TH CONGRESS
1ST SESSION

S. 1382

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

IN THE SENATE OF THE UNITED STATES

MAY 19, 2015

Mrs. GILLIBRAND (for herself, Mrs. MURRAY, Ms. BALDWIN, Mr. BLUMENTHAL, Mr. FRANKEN, Ms. HIRONO, Mrs. SHAHEEN, Mr. SANDERS, Mr. MARKEY, Mr. SCHUMER, Ms. CANTWELL, and Ms. WARREN) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Every Child Deserves
5 a Family Act”.

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

2 (a) FINDINGS.—Congress finds the following:

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

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

13 (3) Of the estimated 400,000 children in the
14 United States foster care system, more than
15 101,000 cannot return to their original families and
16 are legally free for adoption.

17 (A) 50,608 children were adopted in 2013,
18 while 23,090 youth “aged out” of the foster
19 care system.

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

24 (C) Increasing adoption rates, in addition
25 to establishing permanency and decreasing risk
26 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) Experts agree that in many States, lesbian,
4 gay, bisexual, and transgender youth experience dis-
5 crimination, harassment, and violence in the foster
6 care system because of their sexual orientation or
7 gender identity.

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

14 (6) According to the Williams Institute, an esti-
15 mated 19 percent of same-sex couple households in-
16 clude children under 18 years of age.

17 (7) The Williams Institute estimates that
18 3,000,000 lesbian, gay, bisexual, and transgender
19 people have had a child and as many as 6,000,000
20 adults and children in the United States have a les-
21 bian, gay, bisexual, or transgender parent. Among
22 adults under 50 years of age living alone or with a
23 spouse or partner, 48 percent of lesbian, bisexual, or
24 transgender women are raising a child under 18

1 years of age, and 20 percent of gay, bisexual, or
2 transgender men are doing so.

3 (8) As of 2013, same-sex couples are raising
4 1.4 percent of adopted children with 2 parents and
5 are fostering 1.7 percent of foster children living
6 with 2 parents. A 2007 report from the Williams In-
7 stitute found that an additional 2,000,000 gay, les-
8 bian, and bisexual individuals are interested in adop-
9 tion.

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

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

23 (A) The practice of prohibiting applicants
24 from becoming foster parents or adopting chil-
25 dren solely on the basis of sexual orientation or

1 marital status has resulted in reducing the
2 number of qualified adoptive and foster parents
3 overall and denying gay, lesbian, bisexual, and
4 unmarried relatives the opportunity to become
5 foster parents for their own kin, including
6 grandchildren, or to adopt their own kin, in-
7 cluding grandchildren, from foster care.

8 (B) According to the Williams Institute,
9 more than 3,400 children are currently in foster
10 placements with same-sex couples. Another
11 22,000 children are being raised by same-sex
12 adoptive couples. If other States followed the
13 minority of States and discriminated against
14 qualified individuals because of their sexual ori-
15 entation or marital status, foster care expendi-
16 tures would increase between \$87,000,000 and
17 \$130,000,000 per year in order to pay for addi-
18 tional institutional and group care, as well as to
19 recruit and train new foster and adoptive par-
20 ents.

21 (11) Some States allow one member of a same-
22 sex couple to adopt, but do not recognize both mem-
23 bers of the couple as the child's legal parents. Rec-
24 ognition of joint adoption provides children with the
25 same rights and security that children of hetero-

1 sexual parents enjoy. These protections include ac-
2 cess to both parents' health benefits, survivor's, So-
3 cial Security, and child support entitlements, legal
4 grounds for either parent to provide consent for
5 medical care, education, and other important deci-
6 sions, as well as the establishment of permanency
7 for parents and child.

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

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

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

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

2 (a) ACTIVITIES.—

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

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

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

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

1 (2) DEFINITION OF PLACEMENT DECISION.—In
2 this section, the term “placement decision” means
3 the decision to place, or to delay or deny the place-
4 ment of, a child in a foster care or an adoptive
5 home, and includes the decision of the agency or en-
6 tity involved to seek the termination of birth parent
7 rights or otherwise make a child legally available for
8 adoptive placement.

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

13 (c) FEDERAL GUIDANCE.—Not later than 6 months
14 after the date of enactment of this Act, the Secretary of
15 Health and Human Services shall publish guidance to con-
16 cerned entities with respect to compliance with this sec-
17 tion.

18 (d) TECHNICAL ASSISTANCE.—In order to ensure
19 compliance with, and ensure understanding of, the legal,
20 practical, and cultural changes required by this Act in
21 making foster care and adoption placement decisions, the
22 Secretary shall provide technical assistance to all entities
23 covered by this Act, including—

24 (1) identifying laws and regulations inconsistent
25 with this Act and providing guidance and training to

1 ensure the laws and regulations are brought into
2 compliance within the prescribed period of time;

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

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

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

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

19 (e) DEADLINE FOR COMPLIANCE.—

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

1 to in subsection (c), or 1 year after the date of en-
2 actment of this Act, whichever occurs first.

3 (2) AUTHORITY TO EXTEND DEADLINE.—If a
4 State demonstrates to the satisfaction of the Sec-
5 retary of Health and Human Services that it is nec-
6 essary to amend State statutory law in order to
7 change a particular practice that is inconsistent with
8 this section, the Secretary may extend the compli-
9 ance date for the State and any entities in the State
10 that are involved with adoption or foster care place-
11 ments a reasonable number of days after the close
12 of the 1st State legislative session beginning after
13 the date the guidance referred to in subsection (c)
14 is published.

15 (3) AUTHORITY TO WITHHOLD FUNDS.—If a
16 State fails to comply with this section, the Secretary
17 of Health and Human Services may withhold pay-
18 ment to the State of amounts otherwise payable to
19 the State under part B or E of title IV of the Social
20 Security Act (42 U.S.C. 621 et seq., 670 et seq.),
21 to the extent the Secretary of Health and Human
22 Services deems the withholding necessary to induce
23 the State into compliance with this section.

24 (f) GAO STUDY.—

1 (1) IN GENERAL.—Not later than 5 years after
2 the date of enactment of this Act, the Comptroller
3 General of the United States shall conduct a study
4 to determine whether the States have substantially
5 complied with this Act, including specifically whether
6 the States have—

7 (A) eliminated policies, practices, or stat-
8 utes that deny to any otherwise qualified person
9 the opportunity to become an adoptive or foster
10 parent on the basis of the sexual orientation,
11 gender identity, or marital status of the person,
12 or the sexual orientation or gender identity of
13 the child involved;

14 (B) removed all program, policy, or statu-
15 tory barriers that delay or deny the placement
16 of a child for adoption or into foster care on the
17 basis of the sexual orientation, gender identity,
18 or marital status of any qualified, prospective
19 adoptive or foster parent, or the sexual orienta-
20 tion or gender identity of the child; and

21 (C) eliminated all different or additional
22 screenings, processes, or procedures for adop-
23 tive or foster placement decisions based on the
24 sexual orientation, gender identity, or marital
25 status of the prospective adoptive or foster par-

1 ent, or the sexual orientation or gender identity
2 of the child involved.

3 (2) REPORT TO THE CONGRESS.—Not later
4 than 1 year after completing the study required by
5 paragraph (1), the Comptroller General shall submit
6 to Congress a written report that contains the re-
7 sults of the study.

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